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FALSE IMPRISONMENT AND PRISONERS: A QUESTION OF JUSTICE OR LAW?

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In recent years, the English courts have reached seemingly contradictory decisions with respect to the rights of convicted prisoners to sue for false imprisonment when they are detained beyond their proper release date. This article examines those decisions—focusing, in particular, on the most recent case in the area—and concludes that, as the law currently stands, the rules governing this aspect of tort law are both arbitrary and unfair. The article also considers the likelihood or otherwise of actions by similarly aggrieved prisoners succeeding in Singapore.

I. INTRODUCTION

It is axiomatic that the law does not allow one person intentionally to deprive another person of his liberty without a valid defence. In the absence of such a defence, the person whose liberty has been restricted may sue his captor for false imprisonment. The defence most obviously applicable to actions for false imprisonment is lawful authority, and the situation in which lawful authority most commonly applies is with respect to prisoners who are sentenced to spend time in detention for crimes of which they have been lawfully convicted.

In a number of cases involving different facts, the English courts during the last decade of the twentieth century effectively interpreted the concept of lawful authority as meaning that under no circumstances could a prisoner who was lawfully convicted and incarcerated sue for false imprisonment with respect to that incarceration.[1] This blanket refusal to recognise claims for false imprisonment by convicted prisoners came to an end at the cusp of the millennium when, in the case of *R. v. Governor of Brockhill Prison; Ex parte Evans (No. 2)*,[2] first the Court of Appeal and then the House of

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1 See, *e.g.*, *R. v. Deputy Governor of Parkhurst Prison; Ex Parte Hague*; *Weldon v. Home Office* [1992] 1 A.C. 58 (House of Lords) in which claims based on intolerable conditions of detention and wrongful subjection to solitary confinement were unsuccessful.

2 [1998] E.W.C.A Civ. 1042; [1999] Q.B. 1043 (Court of Appeal, Lord Woolf M.R. and Judge L.J., Roch L.J. dissenting); [2000] U.K.H.L 48; [2000] 3 W.L.R. 843 (House of Lords,

Lords allowed an action by a prisoner who was wrongly detained after the expiry of her sentence. The action succeeded notwithstanding the fact that the act of detaining the claimant beyond her proper release date had been committed in good faith, and the case was seen as heralding a more sympathetic climate for false imprisonment actions by prisoners—if not with respect to all aspects of their detention, at least in circumstances where the legitimate period of that detention had been exceeded.

However, in the recent decision of *Quinland v. Governor of Swaleside Prison*,[3] the Court of Appeal has confirmed the validity of pre-*Evans* jurisprudence as represented by the case of *Olutu v. Home Office*,[4] and has stated that not every circumstance in which a prisoner is wrongly detained beyond his rightful release date will give rise to a remedy in tort. Although at one level the decision in *Quinland* is understandable, the message which it sends is nevertheless regrettable. This article will consider both the state of the law on the late release of prisoners following *Quinland* and the effect which the *Human Rights Act 1998*[5] may have on the outcome of future actions of this kind in the United Kingdom. It will also look briefly at who is responsible for determining periods of detention and remission of sentences in Singapore and at what impact, if any, the English cases might have in the local context.

II. The Pre-*Quinland* Position on the Late Release of Prisoners

In 1997, in the case of *Olutu*, the Court of Appeal was called on to determine the modern position with respect to the liability of a prison governor who has kept a person in prison after the end of his lawful period of detention. *Olutu* was decided in the light of the nineteenth century case of

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Lord Slynn of Hadley, Lord Browne-Wilkinson, Lord Steyn, Lord Hope of Craighead and Lord Hobhouse of Woodborough) [*Evans* cited to Q.B. for Court of Appeal and W.L.R. for House of Lords]. *Evans* adopted a position similar to that already recognised by the Australian courts in cases such as *Casley v. Commonwealth* (1981) W.A.R. 85 and *Cowell v. Corrective Services Commission of New South Wales* (1988) 13 N.S.W.L.R. 714. (Although *Evans* did not enjoy universal approval at the time it was decided—indeed, it was the target of some criticism—this writer was among those who supported the decision. See Fordham, "False Imprisonment in Good Faith" (2000) 8 Tort Law Rev. 53 for an appreciation of the judgment of the Court of Appeal.)

3 Reported as *Quinland v. Governor of HM Prison Belmarsh* [2002] E.W.C.A. 174 and as *Quinland v. Governor of Swaleside Prison* [2002] 3 W.L.R. 807 (Kennedy, Clarke and Hale L.JJ.) [*Quinland* cited to W.L.R.].

4 [1997] 1 W.L.R. 328 (Court of Appeal, Lord Bingham of Cornhill C.J., Auld and Mummery L.JJ.) [*Olutu*].

5 (U.K.), 1998, c. 42.

Henderson v. Preston[6] in which it had been held that a prison governor who honoured a warrant of commitment could not be held liable for false imprisonment.

In *Olutu*, the claimant was a remand prisoner who had been kept in custody pursuant to an order issued by a Magistrate's Court committing her to trial in the Crown Court. The warrant of commitment stated that she must be brought before the Crown Court within 112 days, at which point the court would be required either to extend the detention or to grant her bail. The claimant was in fact held in detention for 193 days without any extension being applied for and without the Crown Prosecution Service bringing her before the court to enable her to apply for bail. She sued the Home Office,[7] arguing that the governor of the prison in which she had been held had falsely imprisoned her by keeping her in detention for 81 days after the maximum permissible period of 112 days had expired. However, the Court of Appeal held that her action must fail. In the words of Lord Bingham of Cornhill C.J.:

> The plaintiff was in the custody of the Crown Court. Only by order of the court could that period of custody be brought to an end . . . Once the custody time limit had expired, the plaintiff was in my view unlawfully detained, and an order which could have led to her release could have been obtained either from the Crown Court or from the Divisional Court; but it does not follow that in the absence of any such order the governor was guilty of falsely imprisoning the plaintiff and in my view he was neither entitled nor bound to release her.[8]

Just over a year later, the case of *Evans* came before the Court of Appeal. *Evans* also involved a claim by a prisoner who – albeit in different circumstances – had been detained after the proper release date. One of the key questions in *Evans* (which was subsequently appealed to the House of Lords) was whether the decision in *Olutu* was applicable or distinguishable.[9]

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6 (1888) 21 Q.B.D. 362. *Henderson v. Preston* contrasted with *Moone v. Rose* (1869) L.R. 4 Q.B. 486, where a gaoler was held liable for failing to release a prisoner held for contempt of court at the end of a fixed statutory period of 30 days' imprisonment.

7 She also sued the Crown Prosecution Service for breach of statutory duty with respect to its failure under the *Prosecution of Offences Act 1985* (U.K.), 1985, c. 23, s. 22, to bring her before the court at the end of 112 days. The Court of Appeal held in this respect that the statute was not designed to give rise to a cause of action for damages by an aggrieved individual, since alternative remedies in the form of *habeas corpus* and judicial review were already available.

8 *Olutu*, *supra* note 4 at 335.

9 This was, of course, a particularly significant question before the Court of Appeal, which would otherwise have been bound by the case.

In *Evans* the claimant was a prisoner who was sentenced to serve two years in prison for various offences.[10] While awaiting trial, she had spent an aggregate of 135 days in custody on remand. Under the *Criminal Justice Act 1991*,[11] she was—as a short-term prisoner—entitled to be released on licence after serving half the sentence, and under the *Criminal Justice Act 1967*[12] she was also entitled to have her sentence reduced to take account of the period which she had spent in custody on remand. The governor of the prison in which the claimant served her sentence calculated her conditional release date based on a recognised formula for taking account of time spent in custody on remand.[13] However, just over two months before the date on which, based on this calculation, the claimant was due to be released, the Divisional Court heard a case in which it concluded that the established formula was incorrect and that a different formula should be substituted for it.[14] The claimant's lawyers calculated that under the newly recognised formula her release date had been set some 62 days later than it ought to have been. She immediately applied for leave to seek judicial review, *habeas corpus* and damages. By the time her application was heard and she was released, only three days of her sentence as originally calculated were left to run. She therefore sued for 59 days of wrongful detention.

The claim failed at trial level, but it succeeded before both the Court of Appeal and the House of Lords. It was held that even though the prison governor had calculated the time to be served based on a formula which appeared to be correct when that calculation was made, the revised formula—which operated retrospectively, since it must be taken always to have represented the accurate interpretation of the relevant statutory provision—showed that the governor's calculation was not, and never had been, correct. Therefore, since the detention was intentional, it was irrelevant that the governor did not know (and, indeed, until the revised formula was substituted for the original, could not have known) that he was wrongly depriving the claimant

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10 She was sentenced to two years' imprisonment for robbery, nine months for burglary and three months for assault occasioning actual bodily harm, the latter two sentences to run concurrently with the first.

11 (U.K.), 1991, c. 53.

12 (U.K.), 1967, c. 80.

13 According to this formula, which was first used in *R. v. Governor of Blundeston Prison; Ex parte Gaffney* [1982] 1 W.L.R. 696, rather than aggregating the total number of days spent on remand and deducting that from the total sentence to be served, the governor deducted from each of the three sentences the period spent on remand for the relevant crime (73 days on the robbery charge and 62 days for the burglary and assault charges). Since the burglary and assault charges ran concurrently with the robbery charge, this effectively resulted in only 73 days (rather than 135 days) being deducted from the overall sentence.

14 See *R. v. Secretary of State for the Home Department; Ex parte Naughton* [1997] 1 W.L.R. 118. This case held that the aggregate number of days spent in custody on remand (and not just the number of days spent on remand with respect to the longest of the concurrent sentences) must be deducted from a prisoner's sentence.

of her liberty during the latter part of her sentence. His good faith was thus not a bar to the action for false imprisonment succeeding.

Both the Court of Appeal and the House of Lords held that *Olutu* could be distinguished. In the House of Lords, Lord Hobhouse observed that in *Olutu* the warrant had both authorized and required the governor to keep the claimant until she was taken to the Crown Court, which meant that: "[t]he steps which needed to be taken when the time limit was exceeded were for others to take and did not affect his duty to continue to hold her in custody,"[15] whereas in *Evans*, the prison governor: ". . . needed to consult the relevant statutory provisions and come to the right conclusion as to how long he was authorized to imprison her."[16] Despite the governor's good faith in interpreting the provisions as he did, he had reached the wrong conclusion, and for that reason he was responsible in law for the claimant's wrongful detention.

III. The Decision in *Quinland*

In *Quinland*, the claimant was convicted of several offences. He was sentenced to serve a combination of concurrent and consecutive sentences amounting to a period of two years and three months in prison.[17] When sentencing the claimant, though, the trial judge made a mistake in stating the length of the sentence and told the claimant that he was to serve a sentence of two years and six months.[18] No one in court noticed the error. Later, a single judge in the Court of Appeal (when dismissing the claimant's application for permission to appeal against his conviction and sentence) noticed that the sentencing judge had made an arithmetical error with respect to the length of the claimant's sentence, and he referred the matter to the full court for the error to be corrected. However, by the time the Criminal Appeal Office put the matter before the full court, it was too late to prevent the claimant from serving a term of imprisonment which was appropriate for a sentence of two years and six months rather than one of two years and three months.[19] The claimant, having spent six weeks longer in prison than

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15 *Evans*, *supra* note 2 at 864. His Lordship observed that in this respect *Olutu* was consistent with the old decision of *Henderson v. Preston* (*supra* note 6). He also referred to the decisions in *Olliet v. Bessey* (1682) T. Jones' Rep.214 and *Greaves v. Keene* (1879) 4 Ex. D. 73.

16 *Ibid*.

17 The claimant was sentenced to two years for blackmail and twelve months for burglary, the sentences to run concurrently. He was also sentenced to serve three months for driving whilst disqualified and three months for handling, the latter two sentences to be "concurrent to each other but consecutive to the two years."

18 The judge apparently miscalculated the sentence by adding the two three month sentences to each other when they were supposed, according to his own judgment, to run concurrently.

19 The term took into account the provisions of the *Criminal Justice Act 1991* (*supra* note 11) under which a short-term prisoner may be released after serving half his sentence.

he ought to have done,[20] brought an action against the governors of the two prisons in which he had served his sentence and the Lord Chancellor's Department, claiming damages for false imprisonment and breach of the duty of care owed to him by the Registrar of Criminal Appeals.

The district judge struck out the claim on the grounds that the prison governors had acted in accordance with the warrant and the registrar was protected from litigation under section 2(5) of the *Crown Proceedings Act*.[21] The claimant appealed to the Court of Appeal, where the findings of the trial judge were upheld.

With respect to the claim that the governors were liable for false imprisonment, Kennedy L.J., who gave the judgment of the court on this aspect of the action,[22] considered the relevance of *Olutu* and *Evans* to the present case. Both had been raised in argument before the trial judge and were argued again before the Court of Appeal. Counsel for the claimant argued that *Olutu* was distinguishable since it involved a custody time limit at the end of which the claimant could only have been freed as the result of a court order. Kennedy L.J. accepted that this was indeed a factual distinction, but he did not consider it to be significant, since "the focus of the court [in *Olutu*] was on the governor's authority, and in the present case, as in that case, the warrant of commitment made it clear what the . . . governors were required to do."[23] As to the argument by counsel for the claimant that *Evans* should be applied, Kennedy L.J. adjudged the decision to be of no assistance. In *Evans*, the governor had had the responsibility of calculating the claimant's release date (since it had fallen to him to assess the number of days to subtract from the sentence to take account of time spent on remand). When deducting from the sentence the number of days spent on remand, the governor had relied on an interpretation of the relevant legislation in a case which had subsequently turned out to be wrong. As a result of this reliance, he had detained the claimant for too long. In the present case, on the other hand, the mistake was that of the judge when handing down the sentence. The governors had merely followed the judge's ruling. Having obeyed a warrant of commitment which was on its face lawful and proper[24]

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[20] He was sentenced on 14 June 1993, having spent some time in custody on remand before trial, and was released on 23 May 1994. After taking into account the time spent on remand, his release date based on half of a sentence of two years and three months should have been 11 April 1994.

[21] *1947* (U.K.), 10 & 11 Geo. VI., c. 44.

[22] Clarke L.J. agreed with the reasons given by Kennedy L.J. Hale L.J. did not refer in her judgment to this part of the claim.

[23] *Quinland*, *supra* note 3 at 813.

[24] Kennedy L.J. referred in this respect to the statement of Lord Woolf M.R. in *Evans* that, based on the authority of cases such as *Henderson v. Preston* (*supra* note 6), *Olliet v. Bessey* (*supra* note 15) and *Greaves v. Keene* (*supra* note 15) "a warrant 'good on its face' can be relied upon by a gaoler until set aside . . . [and] that until set aside it justifies detention so the

and having themselves "made no arithmetical or other error",[25] they could not be held liable.[26]

The court next turned to the question of whether the Lord Chancellor's Department could be liable for the act (or omission) of the Criminal Appeal Office in failing, once the judge's error had become apparent, to bring the case before the full court in time to enable the claimant to be released on the appropriate date. There was no question of the claimant suing the judge for the original miscalculation. Judicial immunity is well-established and is generally accepted as being necessary for both the integrity and the efficiency of the legal system. Judges in superior courts of record in England, as elsewhere, enjoy common law immunity from actions in tort, even if they have acted maliciously.[27] Moreover, judges in such courts are not liable even for acting in excess of their jurisdiction, as long as they act in good faith.[28] So the question here related not to the liability of the judge, but to that of the Crown for the acts of the officials in the Criminal Appeal Office. Although section 2(5) of the *Crown Proceedings Act* protects the Crown against proceedings with respect to acts done by any person "whilst discharging . . . any responsibilities of a judicial nature . . . or any responsibilities . . . in connection with the judicial process",[29] counsel for the

imprisonment is not tortious" (*supra* note 3 at 813, citing the decision of the Court of Appeal in *Evans*, *supra* note 2 at 1056).

25 *Quinland*, *supra* note 3 at 813.

26 Issues relating to the obligations and liabilities of prison governors have also been raised in other contexts in recent years—see, *e.g.*, the decision in *R. (Crown Prosecution Service) v. Registrar General of Births, Deaths and Marriages* [2002] E.W.C.A. Civ. 1661, [2003] 2 W.L.R. 504. In that case, a prisoner awaiting trial for murder wished to marry his long-term co-habitee. In order to marry, the prisoner needed a certificate from the Registrar General. The law appeared to require the Registrar General to issue this certificate unless the prison governor (or director) objected, which he did not do. The Crown Prosecution Service suspected that the marriage was designed to prevent the co-habitee from being compelled to testify against the prisoner in his forthcoming trial, and it brought judicial review proceedings against the Registrar General, with the purpose of preventing him from issuing the certificate, and against the prison director, with the purpose of encouraging him to object. However, with respect to the proceedings against the prison director, the court held that the only ground on which he could object to a prisoner's marriage was on grounds relating to the suitability of the prison, grounds which were not relevant on these facts. For a discussion of this case, see J.R. Spencer, "Spouses as Witnesses: Back to Brighton Rock?" [2003] C.L.J. 250.

27 This immunity has long been recognised. See, *e.g.*, cases such as *Fray v. Blackburn* (1863) 3 B. & S. 576 and *Anderson v. Gorrie* [1895] 1 Q.B. 668.

28 *Sirros v. Moore* [1975] Q.B. 118 (C.A.). Although Lord Denning sought to extend this immunity to judges in lower courts, including magistrates, this was rejected by the House of Lords in *Re McC* [1985] A.C. 528, and magistrates who sentenced a boy to a custodial sentence when they had no power to do so *were* liable to him for false imprisonment.

29 Section 2(5) provides that: "No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by a person whilst discharging any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process."

claimant argued that this protection should not extend to acts or omissions by the functionaries in the Criminal Appeal Office, whose roles in this matter had been fundamentally administrative rather than judicial.

All three judges considered this argument, but concluded that immunity under section 2(5) *did* extend to such persons. Although referred to the dictum of Tudor Evans J in *Welsh v. Chief Constable of Merseyside Police*[30] in which the learned judge took the view that it was "directed to judicial and not . . . administrative functions", their Lordships doubted the validity of this dictum and preferred the decision in *Wood v. Lord Advocate*[31] in which it was effectively held that even clerical acts which were part of the judicial process ought to be protected by section 2(5). Hale L.J., for example, observed that:

> The Court Service may be an agency of the executive but it exists, in part if not in whole, to facilitate and implement the workings of the judiciary. There are some of its activities over which the judiciary and not the executive must have the ultimate control. Whatever else these may include, they must include the putting into effect of the orders or directions of a court.[32]

Having decided that section 2(5) of the *Crown Proceedings Act* applied, their Lordships went on to consider whether its terms were inconsistent with the provisions of article 5 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*[33]—the article which forbids unlawful detention—and whether for this reason immunity ought not to be granted. However, Kennedy L.J. concluded that "[e]ven if it is permissible to look to the Convention for assistance in relation to an Act which was passed prior to ratification I cannot find anything in the Act which resort to the Convention would help to resolve . . .".[34] He added that section 3 of the *Human Rights Act 1998*—requiring United Kingdom legislation to be given effect to in a way which is compatible with Convention rights—could not apply, since the events in question took place before the Act became law. While Clarke L.J. was of the view that it did not "necessarily follow that the position would be the same if a similar case fell to be decided after section 3 of the *Human Rights Act 1998* came into force"[35] and Hale L.J. also questioned "whether that principle can survive the *Human Rights Act 1998*, at least where the result is that a person is deprived of his liberty when

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30 [1993] 1 All E.R. 692.
31 1996 S.C.L.R. 278.
32 *Quinland*, *supra* note 3 at 819.
33 (1953) Cmd.8969.
34 *Quinland*, *supra* note 3 at 817.
35 *Ibid.* at 818.

he should not have been",[36] neither was prepared to express an opinion on the point.[37]

Given their Lordships' decision that the Lord Chancellor's office enjoyed immunity for the acts of the functionaries within the Criminal Appeal Office, it was not necessary for them to consider whether on the facts a duty of care would otherwise have been owed.[38]

Although the decision that the claim must fail was unanimous, it gave their Lordships no satisfaction to hold that the law offered no legal remedy to the claimant. All three indicated considerable regret at the outcome of the case and expressed the hope that, notwithstanding the absence of a legal obligation to pay damages for the six weeks of wrongful detention, the authorities would nevertheless offer the claimant ex gratia compensation.[39]

IV. Discussion

In view of the fact that in *Evans* the decision in *Olutu* was treated as distinguishable rather than wrong, one can of course regard *Quinland* as merely confirming what was already the case—that the law differentiates situations

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36 *Ibid.* at 819.

37 For further consideration of this point, see discussion below.

38 It is not clear whether the "duty of care" to which their Lordships referred in this respect related to the action for false imprisonment or to a duty of care in negligence. Their terminology suggests the latter (see, *e.g.*, Kennedy L.J.'s rather oblique comment, *supra* note 3 at 816, that: "[it being] unnecessary for me to consider whether in the absence of section 2(5) the claimant could establish a duty of care . . . I merely indicate my gratitude to counsel for the submissions addressed to us in relation to that issue"). However, deciding the case as one of negligence would have involved the controversial question of whether mere deprivation of liberty is actionable in that tort, since negligence requires proof of "actual damage" and the courts have historically regarded loss of freedom, like other forms of intangible harm, as too nebulous to constitute such damage. Given the fact that the functionaries within the Criminal Appeal Office were aware of the claimant's detention and their carelessness was merely a factor which delayed the process leading to his release, it might have been more appropriate and straightforward to treat the case as one of false imprisonment on their part, but the issue does not appear to have been examined in those terms.

39 Kennedy L.J. (*supra* note 3 at 817) observed: "I reach the conclusion . . . with regret. The evidence clearly suggests that as a result of maladministration the claimant was in prison for six weeks longer than he should have been . . . and even in the absence of any legal obligation to compensate that seems to me to be something that should have been recognised." Clarke L.J. (*ibid.* at 818–819) stated: ". . . I too reach the conclusion . . . with regret. It seems to me that the extra six weeks served by the claimant was either wholly or in large part caused by error in the Criminal Appeal Office. In these circumstances, I would have hoped that some compensation would have been available to him. Indeed, I still hope that it may be, albeit on an ex gratia basis." And Hale L.J. (*ibid.* 819) added: "The Criminal Appeal Office was certainly largely, and quite possibly wholly, the cause of the extra six weeks' imprisonment that he served. I share the hope expressed by Clarke L.J. that, even now, compensation can be made available to him on an ex gratia basis."

where a period of lawful detention is exceeded by reason of a court order from those where it is exceeded due to a miscalculation by a prison governor.

On the other hand, the inherent conservatism of the judiciary when developing or changing legal principles means that it is unsurprising that the courts in *Evans* were unwilling to go further than was necessary to decide that case. So their apparent approval of *Olutu* as being justified because of the established rule that a warrant of commitment effectively offers a complete defence to an action for false imprisonment was not necessarily as significant as it might at first blush appear. And since *Olutu* was a decision of the Court of Appeal, it was not open to the subsequent Court of Appeal in *Quinland* to refuse to follow it, given that their Lordships could not find adequate grounds on which to distinguish the two cases. However, in view of their obvious distress at the decision which they were forced to reach, it is clear that they had grave doubts about whether justice was being done.

Justice is closely associated with consistency, and it is the purpose of this article to suggest that the positions represented by *Evans* and *Quinland* are jurisprudentially inconsistent even if they are theoretically distinguishable. For while *Evans* recognised the fundamental principle that a prisoner who is detained after his proper release date has a legal right to compensation, *Quinland* (applying *Olutu*) effectively places on this fundamental principle the caveat that the prisoner may seek legal redress only if his wrongful detention is attributable to an error made by one kind of official rather than another. From the prisoner's point of view, this is completely irrelevant—whoever is responsible, he has suffered an unjustifiable loss of freedom. The identity of the person whose error has led to his prolonged detention is to him nothing more than a technicality. Yet it is a technicality which the law (wrongly, in the opinion of this writer) regards as crucial.

It ought to be possible for the law to offer compensation to a person who has been deprived of his freedom due to a failure of what Hale L.J. in *Quinland* described as "the system of public administration".[40] In a system which involves acts by various branches of the state, justice demands that at least one of those branches be held accountable. If, therefore, one assumes that the law as represented by *Quinland* is undesirable, the question is how best to put it right and which branch to hold responsible. The action in *Quinland* lay against two distinct types of defendant—those within the judicial service who were responsible for failing to correct in time the error made by the original judge and the governors of the prisons in which the claimant was held. The logical starting point is to reconsider the potential liability of these two classes of defendant—*i.e.* judicial officials and prison governors.

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[40] *Ibid.* at 819.

With respect to judicial officials, both the common law rules with respect to the immunity of judges and, more particularly, the terms of the *Crown Proceedings Act* are crucial. Due to the provisions of the latter, the Court of Appeal in *Quinland* considered itself barred from attributing liability to any person fulfilling a judicial function. However, even if one accepts their Lordships' view that judicial immunity must, for the smooth and efficient running of the legal system, be granted not merely to judges but to *all* those involved in the judicial process, including those carrying out purely administrative functions (and it must be conceded that, whatever one's concerns in this respect, there are considerations of both principle and practice to support this view), in future the English courts might be deprived of the power to grant immunity in circumstances such as these. For section 3 of the *Human Rights Act*—which has come into force since the facts to which *Quinland* relates took place—states that so far as it is possible to do so, legislation is to be read and given effect in a way which is compatible with the rights set out in the *European Convention on Human Rights*.[41] The relevant article in the Convention is article 5, under article 5.1 of which: "Everyone has the right to liberty . . . No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law . . ."[42]

The only one of the listed cases under article 5.1 which is of relevance to circumstances such as those under discussion is that which permits "the lawful detention of a person after conviction by a competent court".[43] Under article 5.5: "Everyone who has been the victim of . . . detention in contravention of the provisions of this article shall have an enforceable right to compensation."

Thus the article clearly gives the right to compensation if it transpires that a person has been detained in impermissible circumstances and that his detention has therefore contravened the article. The question is whether the continued detention of a person after the cessation of his legitimate period of imprisonment falls outside the definition of "the lawful detention of a person after conviction by a competent court". Given that it ceases to be lawful to hold a person after the period of his imprisonment ought to have expired (a point which was acknowledged explicitly in *Olutu*[44]) there is

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41 The section applies to both primary and subordinate legislation. Section 3(2) states that it applies to legislation whenever enacted (although it does not affect the validity, continuing operation or enforcement of incompatible legislation).

42 In addition, article 5.4 provides that: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

43 Other cases under article 5.1 relate to situations involving the detention of minors, of those seeking unauthorized entry to a country, of those likely to spread infectious diseases *etc*.

44 "In the present case the maximum period for which the plaintiff could be held in custody had expired, and had not been extended. It followed that she was thereafter detained unlawfully." *Per* Lord Bingham of Cornhill C.J., *supra* note 4 at 334.

a powerful argument that such imprisonment does indeed fall outside the definition. On this basis, the effect of the Convention (through section 3 of the *Human Rights Act*) may in future be to prevent the *Crown Proceedings Act* from granting immunity to judicial officers where such immunity would result in a claimant being denied his right to compensation.

Assuming, though, for the sake of argument, that the terms of the Convention were to be held *not* to cover cases such as these—thus removing the significance of the *Human Rights Act* and allowing all those involved in the judicial process to retain immunity—it is suggested that there is another basis on which the law could offer a remedy. In cases such as those under discussion it would alternatively be perfectly acceptable if liability were to fall on the shoulders of the governor or governors in whose prison or prisons the unjustifiably prolonged sentence is served. The objection likely to be raised in this respect is of course the one which presumably prevailed in *Quinland* and *Olutu*—that it is one thing to make a governor liable when he is the person who is to blame for the miscalculation, but another to make him responsible for a mistake made by a judge or other judicial officer. On the face of it, this is a fair point.

However, if one compares *Evans* with *Quinland* and *Olutu*, they are really not that different. In *Evans* the governor was not at fault at all in the accepted sense of the word. His only mistake was to follow and apply a judicial decision on the amount of time to be deducted from a sentence to reflect periods spent on remand—a decision which was the recognised authority at the time he followed it. He was thus held responsible not for his own mistake but for the mistake of the judges who had decided that case. The fact that what he did appeared—both to him and to everyone else—to be right at the time he did it was irrelevant, as was his good faith. He was liable because he intended to keep the prisoner incarcerated during a period when it subsequently transpired that the prisoner ought to have been released.[45] There is very little difference between that and a situation such as that in *Quinland* (or *Olutu*) where the governor relies on an order or warrant of commitment issued by a judge which requires him to hold the prisoner for a period which it later transpires was too long. If in *Evans* in order to achieve justice it was acceptable to make the governor liable for something which by no stretch of the imagination was his fault, why should it not be equally acceptable to do the same thing in cases like *Quinland* and *Olutu*? After all,

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[45] Indeed in rejecting the argument that the prison governor in *Evans* should escape liability because he had relied on a decision which quite legitimately appeared correct at the time, Lord Woolf M.R. observed: "Looking at the matter from the point of view of the governor, that may appear to be fair and reasonable. However, looking at the matter from the point of view of the appellant, the position is that, as everyone agrees, she has been wrongfully imprisoned and if this reasoning is correct she has no right of redress." See *Evans*, *supra* note 2 at 1056.

a governor who is held accountable in such cases is sued not in a personal capacity but as a functionary of the state. Given that it is the machinery of the state which—through arrest, prosecution, conviction and sentencing—has placed the prisoner in a position of vulnerability, it is surely better to make a conscious policy decision that the state should compensate him for periods of unjustifiable detention rather than to split hairs and rely on the goodwill of those in a position to sanction ex gratia payments. It must be the lesser of two evils to make a prison governor (and, through him, the system) liable if the alternative is that no one within the system is to be legally answerable for such an obvious wrong.

In view of the current—somewhat uncertain and contradictory—position of English law in this area, one might wonder what approach the Singapore courts would be likely to take if someone here wished to initiate an action for false imprisonment on the basis that he had been wrongly detained beyond the expiry of his proper sentence. Here, as in most jurisdictions, sentences are handed down by judges, who, in the absence of specific case-law on point, can be presumed to enjoy a degree of immunity at common law comparable to that accorded to the English judiciary. In addition, under section 79(1) of the *Supreme Court of Judicature Act*[46] registrars and other persons "acting judicially" enjoy immunity from civil proceedings with respect to acts done in discharge of their judicial duties. This immunity extends to situations where such persons act outside the limits of their jurisdiction, as long as they act in good faith.[47] Given that establishing good faith will not generally be a problem, it therefore appears that, in practice, any false imprisonment action initiated in *Quinland*-type circumstances against a judge or other judicial functionary in Singapore would stand as little chance of success here as in the United Kingdom. Indeed, when one takes account of the impact which the *Human Rights Act* might have on future such actions for false imprisonment there, the situation for a potential claimant here is even less promising.

The only possibility of an action would therefore be one arising in *Evans*-type circumstances, where a person claimed that he had served too long a

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[46] Cap. 322., 1985 Rev. Ed. Sing.

[47] The provision, headed "Protection of Registrar and other officers" reads: "The Registrar, the Deputy Registrar or an Assistant Registrar or other person acting judicially shall not be liable to be sued in any court exercising civil jurisdiction for any act done by him in discharge of his judicial duty whether or not within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of." Section 79(1) offers a degree of immunity for the acts of judicial functionaries which is broadly comparable to that granted under section 2(5) the *Crown Proceedings Act*. However, unlike section 2(5), section 79(1) deals with immunity granted to individuals rather than the state, and, perhaps for this reason, the good faith requirement mirrors the English common law position with respect to the immunity of judges who have exceeded their jurisdiction rather than the statutory position with respect to the Crown's blanket immunity for the acts of judicial officers.

sentence because the superintendent (the Singapore equivalent of governor) of the prison in which he had been detained had miscalculated his release date. In Singapore, the only calculation within the purview of a prison superintendent is that of remission, since judges when handing down sentences assume the responsibility of calculating whether or not to take into account time spent on remand prior to conviction and sentencing.[48] Under regulation 118 of the *Prisons Regulations*[49] prisoners (except those serving life sentences or sentences of a month or less) are entitled to one third remission, and regulation 119 provides that this remission is awarded on the admission of a prisoner.[50] Remission can, of course, be lost, and regulation 122 requires the superintendent to inform a prisoner if remission is forfeited. There is little scope under the regulations for errors to be made, but if a superintendent *were* to calculate remission wrongly to the detriment of a prisoner, it is presumably possible, if somewhat unlikely, that the courts in Singapore could adopt an *Evans*-type analysis and allow a prisoner's claim for false imprisonment. Of course only if the courts were to adopt an approach similar to that suggested above—that such a claim against the superintendent ought additionally to extend to a release date calculated wrongly because of a mistake in sentencing—would a prisoner also be able to sue the superintendent even if the error was a judicial one.

V. Conclusion

As things stand in the wake of *Quinland*, under English law a prisoner who has been detained beyond his proper release date through the fault of anyone involved—however tenuously—in the judicial process has no chance of succeeding in an action for false imprisonment. It is possible that the situation might change as a result of the *Human Rights Act*, but this has yet to be determined. In Singapore, where the *Human Rights Act* does not apply, there appears no way for a prisoner to bring a successful action for false imprisonment against anyone within the judicial system if his sentence exceeds its proper term.

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[48] The cases interpret this as being the effect of s. 223 of the *Criminal Procedure Code* (Cap. 68, 1985 Rev. Ed. Sing.) See, *e.g.*, *Mani Nedumaran & Anor v. Public Prosecutor* [1998] 1 S.L.R. 411. Under section 223, "... every sentence ... shall take effect from the date on which it was passed, unless the court passing the sentence or when there has been an appeal the appellate court otherwise directs."

[49] 2002 Rev. Ed. Sing.

[50] Under regulation 124 (1), the President also has the power to cancel remission in whole or in part for the commission of a "grave offence", but since the President enjoys immunity from suit under art 22K of the Constitution of the Republic of Singapore (1999 Rev. Ed.), no action could stem from such an act.

Should the *Human Rights Act* be held *not* to cover such situations in the United Kingdom, one must hope that, if the opportunity arises, the House of Lords will reconsider the law as represented by *Olutu* and *Quinland* and extend *Evans* so that prison governors can in all circumstances be held accountable for unjustifiably prolonged detentions—even where the responsibility for an erroneous release date is judicial. Equally, were a false imprisonment action against a superintendent to come before the Singapore courts, it is to be hoped that *Evans* would be applied here and, indeed, that it would be extended if necessary to allow an action against a superintendent even if the mistake had occurred as part of the judicial process. Although the likelihood of such an approach being adopted is admittedly slight, it represents the only prospect for recognition that from the day a prisoner reaches his proper release date he should be entitled to the same rights to liberty (and thus compensation for deprivation of liberty) as anyone else.