Ordinance (1984 Edition). He was disqualified from driving for a period of 12 months except for the purposes of his taxi business.

The appellant asked the Stipendiary Magistrate to state a case which included the following questions:

"(i) Whether, and if so, in what circumstances, the proviso to s.23(1) of the Traffic Ordinance (1984 Edition), can be correctly applied so as to limit or restrict any disqualification ordered to a particular class or description of vehicle following conviction for an offence contrary to s.34 of the Ordinance?"

"(iii) Was the Stipendiary Magistrate correct to restrict the order of disqualification as he did, or at all?"

Accordingly the magistrate stated a case for the Supreme Court, to which he added the following comment:

"It seemed to me that, in the circumstances, there were reasons amounting to special reasons, as to why the respondent should not be disqualified in respect of driving a taxi. The proviso to s.23 seemed to me to be inapplicable, as there was no question that I was limiting the disqualification to the driving of a motor vehicle in relation to which the offence was committed. The distinction I drew was between the use of his car as a private car and the use of the same car as a public service vehicle."

The appellant submitted that (a) under s.34 of the Traffic Ordinance (1984 Edition), the Stipendiary Magistrate could not limit the disqualification at his discretion, but was bound to order a complete disqualification unless "special reasons" were found not to do so; and (b) if he had wanted to limit the disqualification in the absence of "special reasons," he should have ordered that the disqualification be made under s.23 of the Traffic Ordinance, under which it could be limited at the magistrate's discretion.

The Stipendiary Magistrate submitted in response that he had been correct to limit the disqualification under s.34 as the defendant had demonstrated "special reasons" why he should not be disqualified from driving his vehicle for the purposes of his taxi business.

Held, remitting the matter to the Stipendiary Magistrate for reconsideration:

(1) The Stipendiary Magistrate had erred in law in limiting the disqualification order so as to allow the defendant to use his vehicle for the purposes of his taxi business. Under s.34 of the Traffic Ordinance, limitations could only be placed on the disqualification if "special reasons" were found for doing so, *i.e.* "special" to the offence rather than the offender. If the magistrate had wanted to limit the disqualification, he should have made the order under s.23 of the Ordinance, under which limitations could be placed on the disqualification at his discretion, even in the absence of "special reasons." Although it was open to the court to lift the limit on the disqualification, it was unclear whether there were

"special reasons" why the magistrate had not ordered a complete disqualification. The matter would therefore be remitted to the Stipendiary Magistrate to give the respondent the opportunity to make representations as to why the limitation should not be lifted (paras. 7–8; paras. 15–17).

(2) The defendant would have to prove, on the balance of probabilities that there were "special reasons" as to why he should not be disqualified from driving for the purpose of his taxi business. Whether this evidence would be capable of amounting to "special reasons" for the purposes of the statute was a matter of law and the Stipendiary Magistrate would need to hear the submissions of both the defendant and the prosecutor before ruling on it. A "special reason" was one which was special to the facts of a particular offence. It could be seen as a mitigating or extenuating circumstance directly connected to the commission of the offence which could be taken into consideration by the court in sentencing the offender. A circumstance peculiar to the offender, however, as distinguished from the offence, would not amount to a "special reason" (paras. 9–14).

Cases cited:

(1) *Adair* v. *Munn*, 1940 J.C. 69; 1940 S.L.T. 414, followed.
(2) *Archer* v. *Woodward*, [1959] Crim L.R. 461, followed.
(3) *Barnes* v. *Gervaux* (1980), 2 Cr. App. R. (S.) 258; [1981] RTR 236, followed.
(4) *Gordon* v. *Smith*, [1971] RTR 52; (1970), 115 Sol. Jo. 62, followed.
(5) *Holroyd* v. *Berry*, [1973] RTR 145; [1973] Crim. L.R. 118; followed.
(6) *James* v. *Hall*, [1972] 2 All E.R. 59; [1972] RTR 228; [1968] Crim L.R. 507; (1968), 112 Sol. Jo. 642, followed.
(7) *Jones* v. *English*, [1951] 2 All E.R. 853; [1951] 2 T.L.R. 973, followed.
(8) *MacLean* v. *Cork*, [1968] Crim L.R. 507, followed.
(9) *Newnham* v. *Trigg*, [1970] RTR 107, followed.
(10) *Pugsley* v. *Hunter*, [1973] 1 W.L.R. 578; [1973] 2 All E.R. 10; [1973] RTR 284; [1973] Crim. L.R. 247, followed.
(11) *R.* v. *Crossan*, [1939] N.I. 106, followed.
(12) *R.* v. *Holt*, [1962] Crim L.R. 565, followed.
(13) *R.* v. *Newton*, [1974] RTR 451; [1974] Crim. L.R. 321, followed.
(14) *R.* v. *Wickens* (1958), 42 Cr. App. R. 236, followed.
(15) *Reay* v. *Young*, [1949] 1 All E.R. 1102; 65 T.L.R. 315, followed.
(16) *Whittall* v. *Kirby*, [1947] K.B. 194; [1946] 2 All E.R. 552; 62 T.L.R. 696, followed.

Legislation construed:

Traffic Ordinance (1984 Edition), s.23(1):

"Any court before which a person is convicted of any offence specified in the Schedule—

(a) may in any case, and shall when so required by this Part, order him to be disqualified for holding or obtaining a driving licence for such period as the court thinks fit; and

Provided that if the court thinks fit, any disqualification under this section, other than a disqualification for an offence under section 34 or 35, may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed."

s.34(2): "A person convicted of an offence against this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months . . . for holding or obtaining a driving licence . . ."

K. Harris, *Senior Crown Counsel*, for the appellant;
E.C. Ellul for the respondent.

1 **KNELLER, C.J.:** On June 18th, 1986, Frank Lombard pleaded guilty to driving a motor vehicle on February 12th, 1986, on a public road while under the influence of alcohol to such an extent that he was incapable of having proper control of it contrary to s.34(1) of the Traffic Ordinance (1984 Edition). He was convicted by the Stipendiary Magistrate.

2 He became liable to imprisonment for six months and to a fine of £100 under s.34(1)(a) of the Traffic Ordinance (1984 Edition), and had to be disqualified from holding or obtaining a driving licence for a period of at least 12 months from the date of conviction, unless the court, in the case of special reasons, thought fit to order otherwise. Under s.34(2), the learned magistrate sentenced him to pay a fine of £60 and ordered that his driving licence should be endorsed with particulars of this offence and sentence. He was disqualified from driving for 12 months except for the business of his taxi service.

3 The appellant asked the Stipendiary Magistrate to state a case, concluding with three questions to be answered by the Supreme Court:

"(i) Whether, and if so, in what circumstances, the proviso to s.23(1) of the Traffic Ordinance (1984 Edition), can be correctly applied so as to limit or restrict any disqualification ordered to a particular class or description of vehicle following conviction for an offence contrary to s.34 of the Ordinance?

(ii) Whether, in the circumstances of the offence for which the respondent was convicted, the learned Stipendiary Magistrate was correct in law in not specifically ordering that the particulars of the conviction be endorsed on the driving licence of the respondent?

(iii) Was the Stipendiary Magistrate correct to restrict the order of qualification as he did, or at all?"

4 The learned magistrate in his case stated said:

> "It seemed to me that, in the circumstances, there were reasons amounting to special reasons, as to why the respondent should not be disqualified in respect of driving a taxi. The proviso to s.23 seemed to me to be inapplicable, as there was no question that I was limiting the disqualification to the driving of a motor vehicle in relation to which the offence was committed. The distinction I drew was between the use of his car as a private car and the use of the same car as a public service vehicle."

5 The material put before the Stipendiary Magistrate was in statements by Chief Insp. Guy, the prosecutor, and the respondent's counsel, Mr. Ellul. The taxi driver was 39 and married with three infant children. He had one previous conviction for speeding. He became a partner in a restaurant in La Linea which opened this year on February 13th. He was usually teetotal but drank that evening on an empty stomach because he was busy helping prepare the business for its opening night which caused him stress and strain. He returned to Gibraltar in his vehicle just before midnight, brushed against a traffic barrier before the customs officers and zigzagged in his lane back towards Amar's Bakery. He left the vehicle in College Lane and was arrested by the appellant who, along with Police Const. Pecino, had to support him during the short walk to the Central Police Station.

6 Mr. Ellul submitted that the Stipendiary Magistrate had the power to disqualify the taxi driver from using his vehicle and others of the same class and description save as a public service vehicle, and that is what the magistrate did. Mr. Harris, for the appellant, says that the Stipendiary magistrate erred in law when he limited the disqualification in that way. Driving a vehicle under the influence of alcohol is an offence under both s.23(1)(a) and s.34 of the Traffic Ordinance (1984 Edition) and also by para. 6 of the Schedule to the Ordinance. The magistrate had to order that the respondent be disqualified from holding or obtaining a driving licence for at least 12 months because s.34(2) says so unless, in the case of special reasons, he thought fit to order otherwise. I shall return later to what reasons constitute special reasons. The magistrate is empowered by the proviso to s.23(1), if he thinks fit, to limit the disqualification under s.23(1) to the driving of a motor vehicle of the same class or description but not a disqualification for an offence of driving under the influence of drink under s.34.

7 It is therefore clear that the disqualification order made by the magistrate was not one which he could limit to the driving of a motor vehicle of the same class or description because he made the order under s.34, not s.23. Any order of disqualification under s.34 is expressly excluded from the proviso to s.23(1) which allowed him to limit the disqualification to the vehicles of the same class or description as his vehicle which I presume was a licensed public-service saloon.

8 In other words, a disqualification order under s.34 is a plain unadorned one which disqualifies the driver from holding or obtaining a driving licence for any vehicle for at least 12 months from the date of conviction. As we have seen, however, he had a discretion under s.34 to limit such a disqualification but he could not exercise it until he found special reasons to do so.

9 What reasons constitute special reasons? The phrase is not defined in the Traffic Ordinance (1984 Edition) or any other Ordinance. The King's Bench Division of Northern Ireland in *R.* v. *Crossan* (11) held:

> "A 'special reason' within the exception is one which is special to the facts of the particular case, that is special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception."

10 The same approach was followed in Scotland in *Adair* v. *Munn* (1). It was approved by Lord Goddard, C.J. in *Whittall* v. *Kirby* (16) and it will do very well for Gibraltar. In England it has been held that these reasons are not capable of amounting to special reasons:

(a) The defendant is of good character, has a good driving record, or that he and his family will suffer personal, financial, or other hardship however severe: *Whittall* v. *Kirby* (16).

(b) The defendant has some employment which is of benefit to the public for which he must have a licence: *Gordon* v. *Smith* (4): *Holroyd* v. *Berry* (5).

(c) The defendant's unfitness to drive was contributed to by a lack of food: *Archer* v. *Woodward* (2); or he did not know how much he had drunk: *Newnham* v. *Trigg* (9).

11 The following reasons, however, are capable of amounting to special reasons according to the English courts:

(a) The shortness of distance driven and the circumstances were such that he was unlikely to have met other road users: *Reay* v. *Young* (15) (150 yds. on an open moorland road on which there was no traffic); *James* v. *Hall* (6) (a few yards off the road into a friend's driveway).

(b) A defendant who did not know he was diabetic drank beer which, but for his illness, would not have affected his driving: *R.* v. *Wickens* (14); or a defendant who drank alcohol after taking Amytal tablets and did not know the combination would affect his driving: *R.* v. *Holt* (12).

12 There are and will be other examples in each category. Some are contained in *Wilkinson's Road Traffic Offences*, 12th ed., paras 21.6–21.15, at 764–774 (1985). The onus of proof of special reasons is on the defendant: *Jones* v. *English* (7); and the standard of proof is the balance of probabilities: *Pugsley* v. *Hunter* (10). Special reasons must be proved by evidence and not by the assertions of counsel: *MacLean* v. *Cork* (8). Each case, however, will depend on its own circumstances.

13 Having found that "special reasons" exist, the magistrate is not bound to disqualify. He has a discretion either not to disqualify, or not to disqualify for the minimum period and he must decide whether to exercise that discretion: *R.* v. *Newton* (13). Whether the evidence is capable of amounting to special reasons is a matter of law, not fact, and the magistrate should hear submissions on this from both the prosecutor and the defendant before ruling on it: *Barnes* v. *Gervaux* (3).

14 No decision of a Gibraltar court on this matter has been brought to my attention and my own research on the matter has been fruitless. I see no good reason why the law in Gibraltar should be any different to that of the United Kingdom so I respectfully propose to follow it all. I now answer the questions in the case stated in this way:

(a) The proviso to s.23(1) of the Traffic Ordinance (1984 Edition) can never be correctly applied so as to limit a disqualification imposed on a driver following a conviction for driving under the influence of drink or drugs contrary to s.34 of the Ordinance.

(b) This does not arise because the learned Stipendiary Magistrate ordered that the particulars of the offence be endorsed on the driving licence.

(c) The Stipendiary Magistrate erred in law in restricting the order of disqualification.

15 What next? Under the Criminal Procedure Ordinance, s.298, the Supreme Court has the power, when it has heard and determined the questions of law arising on any case stated, to reverse, affirm or amend the determination of the magistrate's court or remit the matter to the magistrate's court with the opinion of the Supreme Court, or make other orders in relation to the matter which may seem fit.

16 The respondent chose, it seems, not to appear or to be represented at the hearing of this appeal by case stated. If I make a simple order lifting the limit on the disqualification, he will be disqualified from driving that vehicle up to and including June 17th, 1987, and although that would be his fault for not appearing to urge that this should not happen, it would, in my view, be correct in the circumstances to let him urge the Stipendiary Magistrate not to disqualify him at all, by proving, on the balance of probabilities, that there was some special reason peculiar to the offence. I

am not suggesting, however, that he must or that if he does he will necessarily succeed.

17 I remit the matter to the learned Stipendiary Magistrate with this opinion, to re-summons the respondent and re-open the case from the point at which the prosecutor outlined the facts on which the charge was brought. The Stipendiary Magistrate may then call upon the respondent or his advocate to establish, on the balance of probabilities, that special reasons existed and invite submissions from each side as to whether or not special reasons can be established. The magistrate should then decide whether the discretion not to impose the disqualifications for the minimum period should be exercised and proceed according to law.

Order accordingly.

[1980–87 Gib LR 433]

WEMBLEY STORES LIMITED v. J.T. CHANRAI (GIBRALTAR) LIMITED

SUPREME COURT (Kneller, C.J.): January 9th, 1987

Landlord and Tenant—application for new tenancy—opposition by landlord—5-year interest required by landlord opposing (under Landlord and Tenant Ordinance s.49(2)) tenant's application for new tenancy on ground that wishes to use premises for own business—period of interim continuance of tenancy pending decision on application not included in 5-year period

The plaintiff applied for the renewal of its business tenancy under the Landlord and Tenant Ordinance, s.45.

On October 5th, 1978, the plaintiff obtained the lease of a shop from the then owners, to run for five years from January 1st, 1979. On December 20th, 1979, ownership of the shop was conveyed to the defendant. On January 20th, 1983, the defendant served a notice to quit on the plaintiff, with the date to quit given as December 31st, 1983.

As a preliminary issue, the plaintiff applied for a declaration that the notice to quit was invalid, as the defendant landlord opposed the application for a new tenancy but had not had an interest in the property for at least five years ending with "the termination of the current tenancy," as required by s.49(2) of the Ordinance. It submitted that the "current tenancy" was terminated when the notice to quit was given.