

TO PLY OR NOT TO PLY, THAT

What is plying for hire? That is a question that we all think we can answer, but can you?

LICENSING PHV IN LONDON

Since I first became a cab driver almost forty years ago I made it my business to understand the laws that we have to abide by. Further very early in my time as a driver I spent many hours reading all the stated cases involving plying for hire. Because I have done this many consider that I am an expert on the subject. Knowing what I do it has long been my opinion that the relevant laws that govern both taxis and PHV are not fully understood by those, who regulate both trades. This also applies to those who make the laws and the solicitors who advise them. The licensed taxi trade throughout the United Kingdom has run foul of what can only be described as a bunch of incompetents.

Most will know that PHVs have been licensed since 1976 under the Miscellaneous Provisions Act. It was always said that London should not and did not need mini-cabs to be licensed as London was a special case. What ever was meant by that has always been a mystery. So now let us get on with the question of what constitutes plying for hire.

There has never been a definitive explanation for this particular part of a taxi driver's daily work. However, Butterworths legal dictionary states that the phrase is akin to waiting. Never the less we have to look at the many cases that have gone to the High Court to find the true definition. I will take you back to one of the earliest cases of unlawfully plying for hire this took place 140 years ago. The location was Harrow Railway Station in 1871. The case in question is Clarke & Goodge v Stanford. The facts of this case are that a driver a Mr. F G Clarke took up a position on the station forecourt to await being hired. Clarke and the owner of the vehicle obviously felt they were safe as the forecourt of the station was private, but they were wrong. The driver Clarke was convicted of plying for hire and the owner Goodge convicted of owning an unlicensed hackney carriage, which both of them appealed against the conviction.

On April 29 1871 the case came before the Court of the Queens Bench in the High Court. Lord Chief Justice Cockburn presided over the case accompanied by Mr Justice Mellor and Mr Justice Lush. The conviction was upheld. The summing up of the Lord Chief Justice is very interesting as you will read. This was what the LCJ had to say about the activities of F G Clarke. The carriage was on the private forecourt of the station and was available for anyone who wished to hire his carriage, it was plying for hire. Although the place is private property the public are entitled to travel by train, and has a right to pass over the premises of the railway to get in or out. Therefore if a man is standing on those premises with his carriage to take persons who are desirous of hiring said carriage, he is plying for hire. So the essence of plying for hire is being on view to the public at the time of hiring. Mr. Justice Mellor stated in support the following. "It is said there is no plying for hire as the carriage is admitted on the railway premises under certain regulations, that is it is only to carry persons who come by train. But what is the carriage there for? Though the driver makes no sign he is there to be hired by persons who arrive by train, and there is no restriction as to the persons who, arriving by train shall hire the carriage, therefore it is plying for hire."

LEICESTER SQUARE

Now let me rephrase that comment and apply it to Leicester Square.

The cars are in Whitcomb St under certain regulations and are only to carry passengers who make a booking at the ticket office in Leicester Square. But what is the car there for? Though the driver makes no sign he is there to be hired by persons who apply to the ticket office, and there is no restriction as to the persons who apply to the office to hire the car, therefore it is plying for hire.

Further to this as you know there is a taxi rank in Whitcomb Street outside the hotel where cabs ply for hire, by waiting to be hired. So what is the difference between the cabs on rank and the cars who wait to be hired on the opposite side of the street? The answer is obviously none at all. So where does this leave PHVs who stand round London, and await to be hired by radio. If they are standing in a public place at the time of the hiring they must be on view to the public. Therefore they are unlawfully plying for hire.

MORE COURT CASES

During that same year of 1871 there was another case came before the courts. This was Allen V Tonbridge. The case was about a Mr. Tonbridge who owned a carriage and was allowed to stand on the property of Cannon Street railway station. He had permission to do this by the railway company. Tonbridge had placed his carriage a Brougham on the arrivals platform and waited for the train to arrive. The sole purpose of this was so that his carriage could be hired, which it was. However, a Met police inspector Robert Allen saw the carriage hired and Tonbridge was summoned. He was convicted of plying for hire in the magistrates court and consequently appealed against, the conviction. The appeal came before what was then known as The Court of Common Pleas. This was where three Chief Justices sat in Judgement. Counsel for Tonbridge argued that there was no plying for hire as the station was private property. The senior Chief Justice summed up and delivered this judgement.

Mr. Justice Willes said: "The carriage was in the station and was intentionally exposed so as to be hired by any person. Moreover it was proved that actual application was made to two persons who arrived by train to hire the carriage. And the decision of the Magistrates Court to convict must stand. As you can see the conviction was based on the fact that the carriage was on view to the public at the appropriate time."

Mr Justice Smith in support agreed with the judgement stating the following. "I base my judgement on the case in the Queens Bench referring to the case of Clarke and Stanford V Allen. This was his judgement. It was held that if a person exposes his carriage where every body passing by may be willing to hire it, that is plying for hire."

I now come to the case of White V Cubitt 1929 LCJ Hewart presiding in the Kings Bench Division of the High Court. This little escapade occurred in the private yard at the side of The Railway Tavern public house at the junction of, Rocks lane and Upper Richmond Road. The owner of the vehicle rented the space in the yard from the publican to carry out his business. Two ladies walked into the yard from the street and hired the car to go to Richmond Park Golf Club. The owner of the car a Mr. Charles Cubitt was seen by Sgt White of the Met police accepting the hiring, and Cubitt was summoned to appear in the magistrates Court, where he was convicted. He appealed against the conviction and the case came before the High Court.

The argument put forward by his defence counsel was that he did not ply for hire in a public place as, the yard was private property. Counsel further laboured the point that the public did not have access to the yard. However the Lord Chief Justice stated the following facts. Although the car was on private property and the public did not have access to the yard, the vehicle was plying for hire. Again his comments in summing up are very interesting for the following reasons. The Lord Chief Justice made the following Statement. "The car may have been on private property but it had been placed in such a way in the yard and with the gates to the yard wide open, it was on full view to the public". And the conviction in the lower court was upheld. Again I have to say this puts PHVs in a position of breaking the laws of plying for hire. This for the simple fact they are on view to the public at all material times.

Let us now come forward a few years to 1946 this is the case of Gilbert V McKay.

McKay had an office in Rupert St. with a sign over the shop window showing that cars were for hire. Several cars belonging to McKay were standing in the street outside of the office.

Several people were seen to enter the office for the purpose of paying for the hire of anyone of the cars, in which they were driven away. McKay was charged with being the owner of unlicensed hackney carriages. He was convicted and fined by the Magistrates court and lodged an appeal, the appeal was dismissed. The Lord Chief Justice Lord Goddard had the following to say. "In my opinion even if the cars had been standing in a private yard and could not be seen by the public, there could still have been a plying for hire if they had been appropriated for immediate hiring". The important thing here is the reference to a private yard and not on view to the public at the time of hiring. Even more important is his reference to an immediate hiring. This is what was happening in Leicester Sq. As you can see the essence of plying for hire is being on view to the public. Is this the position of the PHV or not?