

THE LATE BENET HYTNER'S CONTRIBUTION TO THE DEVELOPMENT OF MANX LAW

Benet Hytner KC was the Island's Judge of Appeal for 17 years between 1980 and 1997. 1980 to 1997 of course covers the years when the Isle of Man became what it is now – an offshore financial centre. His distinguished presence as Judge of Appeal enabled the Isle of Man to show that it had a strong, very independent judiciary capable of dealing with the complex international cases which came with this enormous economic change.

Some Leading Cases

1. **CB Radios (1983)** – long-running case against the Isle of Man Government. He gave a judgment setting out clearly the constitutional law when an Act of Parliament and an Act of Tynwald deal with the same subject matter. This is still regularly cited today.
2. **Crookall v Harbour Board (1982)** – another case against the Isle of Man Government. He set out in a definitive manner the constitutional history of the Isle of Man in the context of a land dispute. It highlighted the unique nature of the Isle of Man's land law.
3. Various cases dealing with the collapse of the **Savings and Investment Bank** (the collapse occurred in 1982) – he developed the law about banking and insolvency. This laid the foundations for a sounder statutory regulatory system in the 1990's.
4. **Clucas v Clucas (1981)** – a notable case which had a considerable effect on the legal profession (and judges). It set out the requirements for an advocate to robustly stand up to a Deemster when the latter was in danger of misdirecting himself. This and several other judgments stressed the proper role of Manx advocates in court and the need to stand up to difficult clients and judges. It was also emphasised that judges should not be sensitive to criticism. This was all quite novel in the Isle of Man in those days.
5. **O'Callaghan v Teare (1981)** – a very clever yet legally sound judgment which spelt the end to the barbaric punishment of birching for which the Island had been notorious.
6. In **R v Pate (1981)** – he developed the Manx law on provocation as a defence to murder. There was no Manx equivalent of the Homicide Act 1957. He held that a good reason not to apply decisions of the House of Lords and the English Court of Appeal was where decisions of those courts could be properly described as an affront to common sense and any sense of decency. Thus pre-1957 English case law (holding that unusual characteristics of a defendant should not be taken into account) should not be applied in the Isle of Man.
7. A somewhat similar issue arose in **In Re Barr (1992)** where the Manx law on criminal contempt (publication tending to prejudice trial) was set out, being based on the common law rather than statute. Comments had been made by the Isle of Man's Chief Minister about a European Court judgment which was relevant to a pending prosecution for work permit infringement. It was held that no contempt had occurred.