

LAW NOTES

Offensive Behaviour – Naked Sunbathing On Beach

***Ceramalus V Police (Unreported, High Court, Auckland, Tomkins J,
8 July 1991, AP76/91)***

This case is important because it is one of the few High Court decisions to discuss the requirements necessary to prove a charge of "offensive behaviour". In this case it centred on naked sunbathing on a beach occupied by a large group of children.

Facts

Ceramalus was charged and convicted in the District Court of offensive behaviour in a public place (section 4 (1) (a) of the Summary Offences Act). He had walked naked onto a beach occupied by a large group of school children aged between 8 and 11 years, whereupon he lay down to "sun-bathe", face up, only some 10 metres from part of the group.

He appealed, contending that what he had done was neither "behaviour" nor "offensive" within the meaning of the section.

The Issues

The High Court considered two issues:

- 1 Whether "behaviour" in this section was a matter of action rather than appearance? Ceramalus contended that by walking naked his behaviour was walking, but that his nakedness was not an action, and therefore was not behaviour.
- 2 Whether the word "offensive" takes on its primary meaning of "aggressive and having the quality of attack", or whether the secondary meaning of "objectionable" applies?

Held

The First Issue

Ceramalus' behaviour encompassed his actions in walking along the beach and lying upon it while naked. It was a combination of these factors that amounted to his behaviour.

The Second Issue

The true meaning of "offensive behaviour" was that which aroused feelings of anger, disgust or outrage. The argument that it meant "aggressive or attacking" was rejected.

Three Principles Emerge:

- 1 The test is objective – whether the behaviour would be regarded as offensive in the mind of a reasonable person. It is not necessary to prove that persons present found the behaviour offensive.
The Court can have regard to current community standards, recognising that what was previously offensive may not now be so. When the Court is deciding what the attitude of responsible members of the community would be, it would be helpful to take into account the effect the conduct had on those actually there.
- 2 The judgment of the conduct in question, in every case, is a matter of degree depending on the relevant time, place and circumstances.
- 3 The behaviour must be a serious interference with the rights of others such as would justify the intervention of the criminal law.

For behaviour to be "offensive behaviour" it must be calculated to wound the feelings, arouse anger or resentment or disgust or outrage in the mind of a reasonable person.

Conclusion

Whereas the reasonable person would regard Ceramalus' behaviour as inappropriate, unnecessary and in bad taste, they would not be angered, disgusted or outraged by it. The appeal was allowed.

Comment

We are now at the stage where, if we are going to charge a person with offensive behaviour there must be evidence to prove a deliberate intent to offend.

If we cannot prove that element, we will have difficulty in proving the charge.

However, an intent to offend might be inferred from the circumstances, eg. masturbating in a carpark without people around in broad daylight may not of itself be offensive, but continuing when people enter the carpark would be evidence from which an intention to offend could be inferred.