Points of Law or Legal Distinctions
Misuse of Drugs Act 1971

1. Are alcohol and tobacco "dangerous or otherwise harmful drugs"?

2. Are alcohol and tobacco within the competence of the MDA 1971, an "Act to make provision for dangerous or otherwise harmful drugs"?

3. Is it a legitimate aim of the MDA to treat unequally those who exercise property rights with equally harmful drugs?

4. Do Government and/or the ACMD have the legal power to exclude the two drugs which Government acknowledged, in Cm 6941 page 24, cause the most harm to individuals and society from their implementation or advice on implementation of the MDA 1971?

5. Is it a legitimate aim of the MDA to make distinctions between drug use which "is having or appears ... capable of having harmful effects sufficient to constitute a social problem" and drug use which is not "having harmful effects sufficient to constitute a social problem", MDA s1(2)?

6. Does the ACMD have a statutory duty to provide Government with independent advice and recommendations concerning alternative regulations, under MDA s7, to those specified by default in MDA ss3, 4 and 5 if evidence indicates those alternatives are in the public interest, *viz* "advice on measures (whether or not involving alteration in the law) which in the opinion of the Council ought to be taken ... for restricting the availability of such drugs or supervising arrangements for their supply...", MDA s1(2)?

7. Does the SSHD have a statutory duty to provide Parliament with recommendations concerning alternative regulations, MDA s7, to those specified under MDA ss3, 4 and 5 if evidence indicates those alternatives are in the public interest?

8. Does the ACMD and the SSHD have a statutory duty, or a duty under the Rule of Law, to ensure that regulations evolve with new evidence of drug harmfulness to ensure proportionality of regulations to risk?

9. Does the ACMD and the SSHD have a statutory duty, or a duty under the Human Rights Act 1998, Article 5 Liberty with respect to arbitrariness, to ensure that regulations evolve with new evidence of drug harmfulness to ensure proportionality of regulations to risk?

10. Do the current, i.e. default, regulations in MDA ss3, 4 and 5 prohibit all exercise of property rights with respect to controlled drugs, irrespective of risks to the public, and does that engage the ambit of Protocol 1 Article 1?

11. Do the current, i.e. default, regulations in MDA ss3, 4 and 5 prohibit all exercise of informed choice and freedom of contract for consenting adults, irrespective of risks to the public, and does that engage the ambit of Article 8?

12. Are the UN Conventions incorporated into domestic law by the MDA or any other Act of Parliament?

13. In interpreting the MDA are the unincorporated UN conventions mandating unequal treatment any more significant, to the Courts or the Executive, than any other unincorporated international treaties mandating equal treatment?

14. Is the MDA implemented contrary to the Rule of Law[1], which presupposes the generality of the laws, their plain and even applicability (*in abstracto*) and their uniform application (*in concreto*)?

15. Is the MDA implemented contrary to the Human Rights Act 1998 Articles 8 and Protocol 1 Article 1 conjunct the parasitic Article 14 on the ground of "property" or "legal status"?

16. Is there a legal basis for the Sentencing Guidelines Council to advise the Courts that public fear is a factor to be taken into account during sentencing with respect to drug offences, given that offenders cannot be held culpable for public fear?

17. Does the principle that producers and suppliers of controlled drugs are held culpable for the harm caused to consumers who are adults exercising informed choice contradict the case law on causation?

Government's Conscious and Unconscious Distinctions

1. Governments are familiar with the drugs traditionally used by the majority of the electorate, alcohol and tobacco, and also medicinal drugs. This familiarity has lead to consciousness of four types of risk-benefit distinctions applicable to every drug, including controlled drugs, each requiring different types of regulation:

    1. Beneficial use, often encouraged *versus* non-beneficial use, not encouraged;

    2. Reasonably safe use, tolerate *versus* unreasonably harmful use, intervene;

    3. Unreasonably harmful use only harming the user, educate against and provide opportunities for health services *versus* unreasonably harmful use resulting in harm to others, legislate against and provide opportunities for health services;

    4. Unreasonably harmful use harming only the user who is a consenting adult exercising free and informed choice, respect autonomy, educate against and provide opportunities for health services *versus* unreasonable harmful use only harming the user who is unable to exercise fully free and informed choice, i.e, 'vulnerable groups' – the young, drug dependant users, protect autonomy, legislate against, educate against and provide opportunities for health services.

2. In contrast, Government's are mostly unfamiliar with non-medical drugs used by minorities. As a result they fail to make these conscious distinctions, instead focussing only on their risks. These drugs are judged 'harmful and no-one should use them', thereby denying the distinctions made for equally harmful but more familiar drugs. As a result Government makes an unjustified distinction between:

    5. Familiar drugs *versus* equally harmful unfamiliar drugs. Familiarity leads to acceptability and acceptability leads to legal status – all become grounds for unjustified discrimination and all are exhibited on page 24 of Cm 6941.

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[1] Lord Bingham of Cornhill KG (2006) *The Rule of Law*, Sir David Williams Lecture, House of Lords, November 2006