

LEGAL ADVICE

Does the season of goodwill always mean the season of drink driving? ...part II

In last month's edition, we saw how holiday festivities can cause drivers to end up joining a class of individual which they would normally condemn - namely, they can become drink-drivers. Also, we made mention of certain circumstances in which, even when a conviction has been found for an offence of drink-driving, matters can result in a person not being disqualified.

We repeat that in the vast majority of instances, mitigation based on an individual's personal circumstances will never be sufficient to result in a person avoiding disqualification. This is because the courts quite rightly have a strong view of persons involved in drink-driving, and while first-time drink-drivers with relatively modest levels over the legal limit and no other aggravating features might be dealt with by way of financial penalty, others who have more aggravating features such as higher alcohol levels or accidents will be dealt with by way of community punishments, or on occasions with prison sentences.

There are, however, certain 'special reasons' cases which can occasionally mean a person can escape disqualification even



when convicted of an offence of excess alcohol. These refer to very unusual situations which are related to the circumstances of the persons driving, and not to their circumstances as individuals.

These matters go towards the essential question of whether or not it would be fair for a person to be disqualified, bearing in mind all the circumstances of the case - and by their very nature, these are not defences to allegations of excess alcohol, but rather mitigations. Therefore, if properly put by an experienced lawyer on behalf of somebody who finds themselves in these circumstances, they can mean a disqualification can be escaped.

This is by no means to condone such behaviour or suggest driving with an excess of alcohol should ever be contemplated, but there are exceptional cases where the individual's circumstances are such that the courts have in earlier cases decided disqualification is not necessarily inevitable.

The general classes of these 'special reasons' cases fall into three separate brackets, and these are: that at the time of the incident, there was an emergency taking place; that the distance driven and the circumstances of the driving was such that no other road user was effected by the driving; or finally, that the reason for the person being in excess of the legal limit was in essence not his fault, as it was caused by his having alcohol in his system which he was otherwise unaware of.

It can be seen that all three of these very unusual circumstances are special to the offence being committed by the individual. For example, if there was a very serious emergency

taking place, an individual may not be disqualified from driving if this could be established to be the case.

However, the test for establishing whether the person should drive or not in these circumstances and in general is considering whether a sober and right-minded individual, who was not a driver but was with the person who was contemplating driving, would have advised that person in the circumstances to drive or not. Accordingly, every other possible alternative to driving must first be considered, and it is only after deliberating these options and still believing a true emergency existed that a court could possibly be persuaded a person should not be disqualified from driving.

Similarly, in cases where the person had driven a very short distance indeed - perhaps a matter of just a few yards, for example to re-park a vehicle - and had not caused any danger to other road users and was not intending to drive any further than a very few yards, the court may again be persuaded disqualification is not necessary, as in effect the matter was of a minimal danger to the public in general.

Finally, and most troublingly, there are instances where individuals find themselves over the legal limit as a result of alcohol being added to their system without their knowledge. However, this is not a general defence and can only prevent individuals from being disqualified in very limited



circumstances, where not only did they not know of the fact that extra alcohol had been added to their system, but also that they "ought not to have known" such alcohol had been added. Therefore, the person cannot suggest he should not be disqualified when they had been to a party and had been told they were drinking fruit punch, then found themselves to be considerably over the legal limit when they came to be dealt with by the police. This is simply because that even if they did not physically know they were drinking alcohol, they ought to have known because of the symptoms they would subsequently experience.

These so-called 'special reasons' are exceptions to the rule, and we reiterate that in the vast majority of instances where persons are found to be over the legal limit, they are dealt with swiftly and severely by the courts. Therefore, we can only repeat that very great care should be taken not to join the ranks of individuals who will find themselves before the courts for being drink-drivers.

As we stated in our previous article, unfortunately the decision to become a drink-driver is not taken when sober. However, sober drivers can make provision that when they get behind the wheel of a vehicle, they realise not only do they have their own lives and livelihood to consider, but also those of other drivers and pedestrians.

Gwyn Lewis of leading criminal law firm Burton Copeland LLP and drivingoffence.com offers help and advice to Truckstop News readers. If you require advice or further information, go to drivingoffence.com or call 0161 827 9555.