

LEGAL EAGLE

Got yourself a legal question and need an answer?
Just ask our very own legal eagle, Gwyn Lewis...



Drivingoffence.com is a division of Burton Copeland LLP, a leading law firm in the North West. This dedicated Road Traffic Unit, which boasts a team of experienced advocates and national coverage, has an enviable track record in the defence of speed camera offences, and the bunch of regulations with which the motorist and the transport industry has to cope.

Gwyn Lewis, the lead principal, has been a specialist in this area for some 22 years

and is described in Chambers UK Guide to the Legal Professions as a leader in the field who is 'resourceful and resolute'.



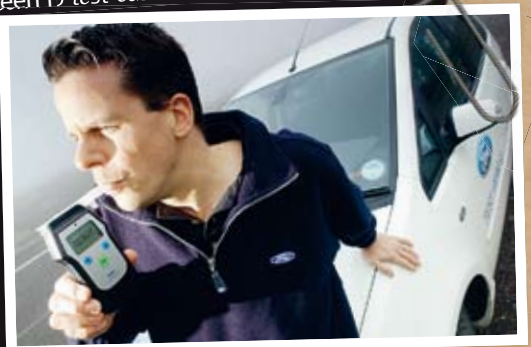
OVER THE LIMIT

Q I have seen one of those electronic breath test kits for sale and fancy buying one. It would be handy to check I'm safe the morning after a few beers. But what is the legal position regarding these devices? For instance, what would happen if it indicated I was safe to drive and I was later pulled over and found to be over the limit on the police kit?

Darren, via email

A The amateur breath test kit obviously have no legal authority in Court in the UK, however if someone used one of these machines in good faith then it may be possible to use this as a "special reasons argument", that is a possible argument to say that whilst legally a person was held to be over the limit, most unusually the person would not necessarily have to be disqualified from driving. Similar situations already exist

for persons who find themselves over the legal limit but then drive in circumstances of emergency or when they have had their drinks "laced" without their knowledge. As far as I am aware there has been no test case in this country on this issue as yet, but I believe that there is a potential in these very unusual circumstances for such an argument to save a drivers' licence.



WEAPON?

Q I was pulled over for speeding recently and the traffic cop found a large screwdriver under the passenger seat and advised me I was carrying an offensive weapon. I'd totally forgotten it was there. Where do I stand legally?

Mike, via email

A It is an offence in England and Wales to have an offensive weapon with you in a public place, without a lawful authority or a reasonable excuse for having it. To be guilty of this offence you have to know that you have the article with you. So if someone else put the screwdriver in your car and you didn't know it was there, you wouldn't be guilty of an offence. However, it's not sufficient to say that you put it in your car and forgot about it. You will be deemed to have it until you get rid of it whether you have forgotten about it or not. Nor would it normally be seen as a reasonable excuse to say

that you forgot it was there.

Whether a screwdriver could be said to be an 'offensive weapon' depends on a number of factors. A screw driver is not made to be used as a weapon. It has another purpose. However if it has been adapted to be a weapon, e.g. sharpened, or the evidence shows that you intended to use it as a weapon at the time you were found with it, then it can be deemed to be an 'offensive weapon' and to possess it would be illegal.

As for the police searching your vehicle, they can usually only do so lawfully if you have been arrested in or near to it, they have reasonable grounds to suspect that it has been used in crime or there are prohibited articles in it, or you give your permission for them to search it. However even if a search is conducted unlawfully, should they find a prohibited article or evidence of a criminal offence, that evidence is still likely to be admissible in court proceedings.

The best advice I can give you is to take things like the screwdriver out of your car until you actually need them, as there are other offences such as going equipped to steal which you could be arrested for in addition to possession of a weapon.

Whether you have a reasonable excuse for having the screwdriver again depends on the facts in each case, and you would have to prove that your excuse was reasonable in the circumstances.

So if you were found with it in the early hours of the morning near to the scene of a violent incident you may be in some trouble. But if you were a joiner on the way to a job on a Saturday afternoon when you were found with it, you would be much less likely to attract any interest from the police for having it