Appendix A

Legislation re Unlicensed Drivers driving Licensed Vehicles

Transport Act 1985, Schedule 7, Paragraph 3

Section 46 of the Town Police Clauses Act 1847 (drivers not to act without first obtaining a licence) shall not apply to a person driving a hackney carriage licensed under that Act for the purpose of or in connection with—

(a) any test of the mechanical condition or fitness of the hackney carriage or its equipment carried out for the purposes of section 45 of the Road Traffic Act 1988 (tests of satisfactory condition of vehicles other than goods vehicles) or for the purposes of any requirements with respect to such condition or fitness imposed by or under any other enactment; or

(b) any test of that person's competence to drive a hackney carriage carried out for the purposes of any application made by him for a licence to drive a hackney carriage.

Extract from Judgement in Stockton on Tees Borough Council v. Fidler, Hussain, Zamania - [2010] EWHC 2430 (Admin)

So far as concerns a hackney carriage within the meaning of the 1847 Act, the origin of the aphorism 'a hackney carriage is always a hackney carriage once it has been licensed' (see Button, paragraph 13.93) is to be found in two cases to which we were taken. In *Hawkins v Edwards* [1901] 2 KB 169, the proprietor of a hackney carriage was prosecuted for failing to display the plate correctly. A licensed hackney carriage had been sent, driven by a man who was not a licensed hackney carriage driver, and with the plate obscured, to pick up the passenger from his home and take him to a railway station. The defence, that at the time the vehicle was not acting as a hackney carriage, was therefore not a hackney carriage, and therefore he did not need to display the plate, was rejected by the Divisional Court. Lord Alverstone CJ, with whom Lawrance J agreed, said this (page 173):

“I think the right view is that the carriage is licensed for a period, and if used during that period in standing or plying for hire the number must be shewn for the whole period. The language of s. 38 of the Town Police Clauses Act, 1847, means, I think, that every wheeled carriage which is in fact from time to time used in standing or plying for hire is to be deemed to be a hackney carriage for the whole of the period during which it is so from time to time used, and the language of the section does not limit the period to the time during which the carriage is in fact used for standing or plying for hire in a street.”

The other case is *Yates v Gates* [1970] 2 QB 27, another decision of the Divisional Court. The defendant was charged under section 47 of the 1847 Act with driving a hackney carriage without having a hackney carriage driver licence. The argument that no offence had been committed, because although passengers were carried, the taxi sign had not been illuminated and there had been no plying for hire, was rejected by the Divisional Court. Lord Parker CJ, with whom Ashworth and Talbot JJ agreed, said this (page 32):

“it is undoubtedly true that the defendant did not have the necessary licence, and that the vehicle in question was itself licensed to ply for hire. The justices, however, took the view that unless the vehicle was plying for hire it would not be a hackney carriage the driver of which would require a licence. That, of course, envisages that a vehicle licensed as a hackney carriage as defined in section 38 of the Town Police Clauses Act, 1847, must change its character from moment to moment; when it is not plying for hire it is not a hackney carriage, and when it is plying for hire it is a hackney carriage.

In my judgment section 46 is perfectly plain. No person shall drive any vehicle which is licensed as a hackney carriage, whatever it may be doing at the particular moment, unless he himself has a licence as required by section 46. Support for this view may be found in *Hawkins v. Edwards* [1901] 2 K.B. 169, where the argument which apparently found favour with the justices in this case was not acceded to in the Divisional Court.

In my view the case should go back to the justices with a direction to convict”.