

## Editor's notes – from the man on the Clapham omnibus to the woman on the Croydon tram

Laura Oliver takes a journey with the most reasonable of men.

All good law students will be familiar with the “man on the Clapham omnibus” although his colloquial origins (and indeed why he is based in Clapham) are unclear. He is a reasonable man whose opinion will provide a yardstick of what the man on the street will think in a given situation.

The judiciary have often held his opinion in high esteem, but in his judicial debut in a 1903 libel case<sup>1</sup> (which attributed the term to Lord Bowen), Collins M.R. declined to defer to him. He held that a “fair comment” was not libel, and in assessing whether the offending comment was fair, it was irrelevant what “the ordinary reasonable man, ‘the man on the Clapham omnibus’... would think a correct appreciation of the work”. As long as it was a bona fide criticism, it was not a libel.

However, in negligence cases it is relevant to consider the opinion of the man on the Clapham omnibus. In 1932<sup>2</sup> Lord Justice Greer felt that if he attended a motor race he “would know quite well that no barrier would be provided which would be sufficient to protect him in the possible but highly improbable event of a car charging the barrier and getting through to the spectators”. The man on the Clapham omnibus would therefore deny compensation to the victims injured by the car.

In subsequent cases our man became a gender neutral “traveller” and took to the London Underground<sup>3</sup> (as any reasonable man would) and when he emigrated to other commonwealth countries, his choice of public transport varied from the Shauiwan Tram<sup>4</sup> in Hong Kong to the Bondi Tram<sup>5</sup> in New South Wales. Nevertheless, the essence of his personality remains the same:

*“He has not the courage of Achilles, the wisdom of Ulysses or the strength of Hercules, though Lord Bramwell occasionally attributed to him the agility of an acrobat and the foresight of a Hebrew Prophet.”<sup>6</sup>*

Although he is professed to be the man on the street, his fictional persona necessarily draws character from the judiciary which created him. On that basis he is likely to be somewhat more educated and fair-minded than the woman on the Croydon tram (whose appearance on YouTube in November last year cannot have escaped many). I suspect that drivers of public transport would need to be canvassed for an accurate answer as to which of the two is actually more representative of the man on the street.

So does the man on the Clapham omnibus have a role outside of the legal courts? In the property world, at least, the answer may be yes. In one recent transaction, when deciding how to structure contributions towards a private estate road, it was decided that a fictional reasonable residential buyer would prefer to pay an upfront capitalised sum to the management company rather than a perpetual yearly contribution. Deferring to the man on the Clapham omnibus (or any other fictional character) is therefore a useful tool in commercial transactions and one which is probably used more often than is consciously acknowledged.

In 2012, property prices in Clapham have pushed houses there outside the means of the average man on the street, but in law reports and the affections of law students he will notionally remain on the Clapham omnibus and it is likely that his views will be taken into consideration for some years to come.



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- 1 *McQuire v Western Morning News Co Ltd* [1903] 2 K.B. 100.
  - 2 *Hall v Brooklands Auto Racing Club*, [1933] 1 K.B. 205.
  - 3 *Macfarlane v Tayside Health Board*, [1999] 3 W.L.R. 1301.
  - 4 *Ng Chiu Mui v Securities and Futures Commission*, Application No 7 of 2007.
  - 5 *Re Sortirios Pandos and Commonwealth of Australia* [1991] AATA 18.
  - 6 *The Oxford Companion to Law*, 1980.