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Criminal Law—Public Intoxication—"Public Place"

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the law is that the prior trial is a nullity.[5] This position is in accord with that taken by the United States Supreme Court in interpreting the meaning of double jeopardy under the federal Constitution,[6] the "convicted person cannot avoid the jeopardy in which he stands and then assert it as a bar to subsequent jeopardy."[7]

Public Intoxication — "Public Place"

Section 1221 of the Penal Law provides for the arrest of any person found intoxicated in a public place. In *People v. Hook*,[8] the defendant was arrested while sleeping in a car in the rear of a private driveway not his own. Although there was sufficient evidence that he was intoxicated, the Court of Appeals unanimously reversed his conviction, holding that the driveway was not a public place as required by the statute.[9]

The Court defined a "public place" as a place "which is in point of fact public, as distinguished from private, a place visited by a considerable number of persons and usually accessible to the neighboring public."[10] While this definition appears adequate, it should be noted that the legal term *public place* can be more relative than absolute. Cases hinging on the determination of what is or is not a public place within the meaning of a statute usually involve mixed questions of law and fact. Circumstances such as the location, nature, and use of the place,[11] the time of day, and whether the complaining witnesses were specifically invited can be crucial. The most important consideration in deciding the question is the intent of the statute itself and the type of offense prohibited.[12]

Although the determination of what constitutes a public place can vary depending on the circumstances, no fault can be found with the Court's decision in the instant case, particularly in view of the defendant's unobtrusive conduct. A fair reading of the statute would indicate that the intent of the legislature was to protect the public from offensive contact with inebriates, rather than an attempt to control the private drinking habits of the populace.

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5. People v. Polmer 109 N.Y. 413, 17 N.E. 213 (1888).
6. Ball v. United States, 163 U.S. 662 (1895).
7. Murphy v. Massachusetts, 177 U.S. 155, 158 (1899).
8. 3 N.Y.2d 485, 168 N.Y.S.2d 958 (1957).
9. Accord: People v. Lane, 8 Misc.2d 325, 32 N.Y.S.2d 61 (City Court 1942); People v. Brown, 64 Misc. 677, 120 N.Y.Supp. 859 (County Ct. 1909).
10. Madison Products v. Coler, 242 N.Y. 467, 473-474, 152 N.E. 264, 266 (1926); People v. Whitman, 178 App.Div. 193, 194-196, 165 N.Y.Supp. 148, 149-150 (2d Dep't 1917).
11. Bowker v. Semple, 51 R.I. 142, 152 A. 604, 606 (1930).
12. For example, exhibitionism, although performed on private property, may well violate the statute against indecent exposure in a public place, whereas a person found intoxicated in the same place might not be guilty of public intoxication. See People v. De Vigne, 27 Mich. 635, 261 N.W. 101, 102 (1935); People v. Whitman, *supra* note 10.