Public Prosecutor *v* Adnan bin Kadir
[2013] SGCA 34

Case Number	: Criminal Reference No 3 of 2012
Decision Date	: 28 June 2013
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; V K Rajah JA; Lee Seiu Kin J
Counsel Name(s)	: Lee Lit Cheng and Wong Woon Kwong (Attorney-General's Chambers) for the applicant; Abraham Vergis and Clive Myint Soe (Providence Law Asia LLC) for the respondent.
Parties	: Public Prosecutor — Adnan bin Kadir

Criminal Law – Misuse of Drugs Act

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2013] 1 SLR 276.]

28 June 2013 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This criminal reference arose from a decision of the High Court in *Adnan bin Kadir v Public Prosecutor* [2012] SGHC 196 ("the Judgment"). In the light of the Judgment, the Public Prosecutor ("the PP") referred the following question of law of public interest ("the Question") to this court pursuant to s 397(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"):

> Whether, in the case of a prosecution for an offence under section 7 of the Misuse of Drugs Act (Chapter 185, 2008 Rev Ed), the Prosecution bears the burden of proving, beyond a reasonable doubt, that the accused imported the controlled drug *for the purpose of trafficking*.
>
> [emphasis in original]

Background

2 The Respondent, Adnan bin Kadir, pleaded guilty in the District Court to importing 0.01g of diamorphine (a Class A controlled drug), which is an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). Section 7 states:

> **Import and export of controlled drugs**
>
> **7.** Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

3 In mitigation, the Respondent asserted, *inter alia*, that he had imported the drugs for his own consumption. The Prosecution disputed this assertion but argued that it did not, in any event, qualify the Respondent's guilty plea. The senior district judge agreed and sentenced the Respondent to the mandatory minimum punishment of 5 years' imprisonment and 5 strokes of the cane (as prescribed

under s 33 read with the Second Schedule of the MDA). This was on account of the Respondent's lack of antecedents, his early plea of guilt, and the relatively small amount of drugs involved. With his consent, a second charge of importing methamphetamine was taken into consideration for the purpose of sentencing.

4 The Respondent then appealed against the sentence imposed. To support his appeal, he filed a mitigation plea in which he reiterated that he had brought the drugs into Singapore for his own consumption. The High Court held that s 7 required the Prosecution to prove, beyond a reasonable doubt, that the accused imported the drugs concerned for the purpose of trafficking. Since this was not proven by the Prosecution, the High Court set aside the Respondent's conviction and remitted the case to the District Court for a new trial. The effect of the Judgment is that for there to be an offence under s 7, the Prosecution must also prove, in addition to the act of importing, that the drugs were imported for purposes of trafficking.

Our decision

Setting the scene

5 The answer to the Question hinges on how the word "import" in s 7 should be interpreted. The starting point for construing the word "import" is the Interpretation Act (Cap 1, 2002 Rev Ed) ("the IA"). Section 2(1) of the IA states:

> **Interpretation of certain words and expressions**
>
> **2.**—(1) In this Act, and in every written law enacted before or after 28th December 1965, the following words and expressions shall … have the meanings respectively assigned to them unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided:
>
> …
>
> "import", with its grammatical variations and cognate expressions, means to bring or cause to be brought into Singapore by land, sea or air;
>
> …

6 Thus, s 2(1) of the IA gives the word "import" its plain ordinary meaning, *viz*, the bringing of an object into the country. This definition does not require that the object must be brought into Singapore for any particular purpose before it would qualify as an act of importation. Therefore, if this is the correct interpretation of the term "import", then the answer to the Question would be "No".

7 Section 2(1) states that the definitions in the IA *shall* apply unless the written law expressly provides otherwise or unless "there is something in the subject or context inconsistent with such construction". Since the MDA does not expressly assign a different meaning to the word "import", the key question is whether the meaning given by the IA is inconsistent with the subject or context of the MDA.

8 What does "subject or context" mean? The word "context" is defined by the learned author of *Bennion on Statutory Interpretation* (LexisNexis, 5th Ed, 2008) as follows (at p 588):

> For the purpose of applying the informed interpretation rule, the context of an enactment

comprises, in addition to the other provisions of the Act containing it, the legislative history of that Act, the provisions of other Acts *in pari materia*, and all facts constituting or concerning the subject-matter of the Act.

This broad definition is consistent with s 9A(2) of the IA, which allows courts to consider any extrinsic material that would assist in ascertaining the meaning of a statutory provision. We would therefore adopt this definition in relation to the word "context" in s 2(1) of the IA. As for the word "subject", it is clear that the MDA is a law enacted by Parliament as a demonstration of Singapore's determination (and in fulfilment of her international obligations) to suppress the illicit importation into and exportation from Singapore of controlled drugs and the illicit trafficking of the same. In the words of the Privy Council in *Ong Ah Chuan and another v PP* [1979-1980] SLR(R) 710 ("*Ong Ah Chuan*") at [38], it is a law "to prevent the growth of drug addiction in Singapore by stamping out the illicit drug trade".

9 The question then is whether there is anything in the MDA, or the relevant extrinsic materials, that is inconsistent with the meaning of "import" given by the IA, thereby suggesting that Parliament had in mind a different meaning when it used the word "import" in s 7 of the MDA. In deciding this question, three things must be borne in mind.

10 First, s 2 of the Dangerous Drugs Act (Cap 151, 1970 Rev Ed) ("the DDA"), which was one of the predecessors of the MDA, defined "import" as "to bring, or to cause to be brought into Singapore by land, air or water, otherwise than in transit". However, when the DDA was repealed and the MDA enacted in its place in 1973, Parliament chose to remove this definition without inserting a new one in its place. This suggests that Parliament had consciously decided to let the term be defined in accordance with s 2(1) of the IA. The High Court agreed with this view (at [18] of the Judgment).

11 Second, Parliament has seen it fit to expressly provide in s 5(2) of the MDA that a person commits the offence of trafficking in a drug if he has that drug in his possession "for the purpose of trafficking":

> **Trafficking in controlled drugs**
>
> **5.**—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —
>
> (*a*) to traffic in a controlled drug;
>
> (*b*) to offer to traffic in a controlled drug; or
>
> (*c*) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.
>
> *(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.*
>
> [emphasis added]

As the Deputy Public Prosecutors ("the DPPs") have submitted, if Parliament had intended that for importation to be an offence under s 7 there must also be an intent to traffic, it could easily have made this clear by including words such as "for the purpose of trafficking" in s 7, as was done in s 5(2) above. However, that was not done.

12 Third, the word "import" appears in no fewer than 72 statutes, and in a significant number of these, Parliament gave "import" a custom definition that is different from that in the IA. In some statutes, "import" was expressly defined to *exclude* the bringing of goods into Singapore for a particular purpose. For example, in the Sale of Drugs Act (Cap 282, 1985 Rev Ed), "import" is defined in s 2 as follows:

> "import", with its grammatical variations and cognate expressions, means to bring or cause to be brought into Singapore by land, water or air from any place which is outside Singapore *but does not include the bringing into Singapore by water or air of any goods which it is proved to be* ***intended to be taken out of Singapore*** *on the same vessel or aircraft on which they were brought into Singapore without any landing or transhipment within Singapore*; ...
>
> [emphasis added in italics and bold italics]

We would also refer to the Trade Marks Act (Cap 332, 2005 Rev Ed), where the word "import" is not defined in the statute but the offence-creating section specifies that importation is only an offence when done for a particular purpose:

> **Importing or selling, etc., goods with falsely applied trade mark**
>
> **49.** Any person who —
>
> *(a) imports into Singapore* ***for the purpose of trade or manufacture*** *;*
>
> ...
>
> any goods to which a registered trade mark is falsely applied shall, unless he proves that —
>
> (i) having taken all reasonable precautions against committing an offence under this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark and on demand made by or on behalf of the prosecution, he gave all the information in his power with respect to the persons from whom he obtained the goods; or
>
> (ii) he had acted innocently,
>
> be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 for each goods or thing to which the trade mark is falsely applied (but not exceeding in the aggregate $100,000) or to imprisonment for a term not exceeding 5 years or to both.
>
> [emphasis added in bold and bold italics]

Thus, where Parliament intended for a different definition of import to apply, or where it wished to restrict the scope of the offence of importation, it has made this clear in the statutes concerned. The question before us is whether the MDA is an exception to this practice.

13 With this background in mind, we now turn to consider the Question.

The Single Convention on Narcotic Drugs 1961

14 A substantial part of the Judgment was devoted to discussing the Single Convention on Narcotic Drugs 1961 ("the Single Convention"), which Singapore acceded to on 15 March 1973. After

a careful analysis, the High Court concluded that the Single Convention "was not intended to oblige Party States to criminalise the mere physical transfer of drugs from one Party State to another Party State" and therefore does not require him to interpret s 7 of the MDA to that effect (at [27]).

15 But even assuming that this conclusion is correct, that is not the end of the question. As noted in the Judgment (at [30]), Article 39 of the Single Convention expressly provides that Party States are not precluded from adopting stricter laws than those required by it. The question therefore is whether Parliament had intended to adopt stricter drug laws than as required by the Single Convention. If that was indeed Parliament's intention then it would not be appropriate to rely upon the Single Convention to curtail or limit the scope of the MDA.

The case law

Cases on the applicability of the IA's definition of "import"

16 Our courts have repeatedly and consistently applied the IA's definition of "import" to s 7 of the MDA.

17 In *PP v Ko Mun Cheung and another* [1990] 1 SLR(R) 226 ("*Ko Mun Cheung (HC)*"), the accused persons were charged under s 7 of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) (which is identical to s 7 of the present MDA) for importing diamorphine into Singapore. In their defence, they argued that they had intended to carry the drugs to Amsterdam; they only broke their journey in Singapore for convenience and not with a view to disposing of the drug in Singapore or delivering it to any person in Singapore. The High Court, then consisting of two judges for the trial of capital cases, rejected this argument and explained as follows:

> 22 On this evidence, your counsel has submitted that you have not committed the offence of importing the drug into Singapore under s 7 of the Act but only of being in possession under s 5 thereof. The submission is valid only if the word "import" in s 7 has a meaning which restricts it to bringing something into Singapore as its ultimate destination. *The DPP has referred us to two decisions which support the contrary view that the word "import" in s 7 should be given its ordinary and natural meaning of bringing something into a country*, ***whatever the purpose may be*** *and whether or not it is the ultimate destination thereof* **.** In *R v Geesman* (1970) 13 CRNS 240, a Quebec Sessions Court found the accused guilty of importing hashish into Canada under s 5(1) of the Narcotic Control Act 1960-61 when he was arrested by the customs authorities at Dorval Airport, Montreal after arriving from Spain with ten pounds of hashish strapped to his body which he had intended to transport to British Columbia and then across the border to the United States. *Section 5(1) is similar to s 7 of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed), and neither law contains a definition of the word "import". The President of the court gave the word its ordinary and natural meaning, ie to bring or cause to be brought in something from a foreign country.* His Honour was able to ascertain the intention of the Canadian Parliament as to the scope of that word by reference to Canada having ratified the United Nations' Single Convention on Narcotic Drugs (1961), Art 1, s 1(M) of which defines the word "import" to mean the transfer of drugs from one state to another state. ...
>
> ...
>
> 24 *In our view, the reasoning in* R v Geesman *is applicable to ascertaining the meaning of the word "import" in s 7 of the Act.* Singapore has also ratified the Single Convention on Narcotic Drugs. The Misuse of Drugs Act is not a law which is concerned with customs duty but a law enacted by Parliament as part of Singapore's efforts to suppress the illegal importation into and

exportation from Singapore of controlled drugs as defined in the Misuse of Drugs Act.

25 Furthermore, the DPP has drawn our attention to s 2 of the Interpretation Act (Cap 1, 1985 Rev Ed) which defines the word "import", with its grammatical variations and cognate expressions, to mean, "to bring or cause to be brought into Singapore by land, sea and air". *The definition is clear and unambiguous. We do not see any reason for not applying the statutory definition to the said word in the Misuse of Drugs Act.*

[emphasis added in italics and bold italics]

The convicts' appeal was dismissed by the Court of Criminal Appeal in *Ko Mun Cheung and another v PP* [1992] 1 SLR(R) 887 ("*Ko Mun Cheung (CA)*"). The court held as follows:

19 Counsel for AMK submitted that the definition of "import" in the Interpretation Act was inapplicable to the Act as that definition was inconsistent with the provisions of the Act. ...

20 We were unable to see any reason why the definition of "import" in the Interpretation Act should not apply to the word "import" in the Act. We accordingly agree with the decision of the trial judges that as the two appellants had (knowingly) brought the diamorphine in question into Singapore, they had contravened s 7 of the Act. ...

18 In *PP v Ng Kwok Chun and another* [1992] 1 SLR(R) 159, the issue was whether the accused persons were guilty of importing drugs under s 7 by bringing the drugs into the transit lounge of Changi Airport. Defence counsel argued that s 7 would only be violated if the drugs had crossed the customs area; there was no importation into Singapore if the drugs remained in the transit area. The High Court rejected this argument, stating (at [23]):

In our view, the words "import into Singapore" as used in the Act is not intended to bear the narrow and uniquely specialised meaning for which defence counsel contended. To subscribe to the view advocated by counsel for Ng would negative its purport and be a construction contrary to the intention of the Legislature. Our view is therefore in tandem with the opinion expressed by Chan Sek Keong J in [*Ko Mun Cheung (HC)*] ([21] supra), and *we are of the view that the word "import" must include the bringing in of any merchandise from a foreign country for sale* ***or use*** *in Singapore as well as for transhipment or distribution overseas.* It follows therefore that bringing drugs from elsewhere into Singapore albeit into the transit lounge of the Singapore airport with a view only to proceeding to another destination would fall within the scope and ambit of the word "import" as used in s 7 of the Act.

[emphasis added in italics and bold italics]

On appeal, the Court of Criminal Appeal in *Ng Kwok Chun and another v PP* [1992] 3 SLR(R) 256 ("*Ng Kwok Chun (CA)*") affirmed the High Court judgment and held that the definition of "import" in the IA applied to the MDA:

21 The problems caused by the proliferation of the availability of narcotic drugs have to an extent been addressed by the United Nations in the form of the Single Convention on Narcotic Drugs 1961 ("the Convention"). The Convention was ratified and acceded to by Singapore on 14 April 1973 and it is not disputed that the Act (which was passed as Act No 5 of 1973) is intended to give effect to Singapore's obligations under the Convention. Article 1(1)(m) of the Convention defines "import" as follows:

> 'Import' and 'export' mean in their respective connotations the physical transfer of drugs from one state to another state, or from one territory to another territory of the same state.
>
> 22 There is nothing in this definition that gives "import" any narrower meaning than the meaning ascribed to it by the Interpretation Act (Cap 1). *It is clear that Parliament intends to give effect to its international obligations, and "import" in s 7 of the Act must have the same meaning as that given by the Interpretation Act (Cap 1).*
>
> [emphasis added]

19 The argument adopted by defence counsel in *Ng Kwok Chun* was repeated in *Tse Po Chung Nathan and another v PP* [1993] 1 SLR(R) 308 ("*Nathan Tse*"). Once again, it was rejected by the Court of Criminal Appeal, which held as follows (at [18]):

> The objects of our MDA are clear, namely, to eradicate drug abuse and drug trafficking. There is a clear and simple definition of the word "import" in our Interpretation Act. There is nothing in the context or subject of the MDA which demands that that definition should not be applied to the MDA.

20 More recently, in *Tan Kiam Peng v PP* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*"), this court applied the IA's definition of "import" to s 7 of the MDA, albeit without further comment (at [56]–[57]).

2 1 *Ko Mun Cheung (CA)*, *Ng Kwok Chun (CA)* and *Nathan Tse* were discussed in the Judgment. Essentially, the High Court distinguished the three cases on the basis that the issue of personal consumption did not arise and was not specifically addressed in those cases (at [34], [37] and [38]). Instead, the courts were addressing the argument that the offence of importation under s 7 of the MDA was not established where the accused who brought the drugs into Singapore was merely passing through with the ultimate aim of distributing the drugs in another country.

22 While we agree that the issue of personal consumption did not arise in those cases, the clear *ratio* of those cases (as we have reproduced above) was that the word "import" in s 7 of the MDA should bear the plain meaning given by s 2(1) of the IA. It is *because* "import" is defined in this way that it did not matter whether the drugs were only brought into Singapore in transit – the offence of importation was constituted the moment the drugs were brought physically into Singapore, and the fact that the drugs never left the restricted area of the transit lounge at the airport was immaterial. In our view, if this *ratio* is correct, then it must also apply to the question of whether the drugs have to be brought into Singapore for the purposes of trafficking in order for s 7 to bite. We cannot apply the IA's definition of "import" in transit cases but jettison it in cases where drugs are imported for the purpose of personal consumption. As a matter of logic, if it is immaterial to the offence of importation under s 7 that the drugs were brought into Singapore only temporarily with a view to bringing them out to another country, then it also should not matter that the drugs were brought into Singapore for personal consumption. For the purposes of s 7, the critical act is the bringing into Singapore of the drugs; the further intention of the person who brought the drugs in Singapore is wholly immaterial and cannot alter the fact that the person has imported the drugs into Singapore.

23 Of course, the Court of Appeal is not bound by its previous decisions: Practice Statement (Judicial Precedent) of the Court of Appeal [1994] 2 SLR 689, and we acknowledge that it may well be desirable to reconsider whether the IA's definition of "import" should continue to apply to the MDA in the light of new fact situations. As this court noted in *Lee Chez Kee v PP* [2008] 3 SLR(R) 447 (at [122]):

> ... the courts should never shy away from re-examining the interpretation of any statutory provision ... if it is found that the existing interpretation is not satisfactory or is plainly wrong. The fact that the existing interpretation has been around for a long time does not preclude the courts from re-examining such interpretation, if the doctrine of *stare decisis* is not offended.

Cases on the issue of personal consumption

24 In *Tan Kheng Chun Ray v PP* [2012] 2 SLR 437 ("*Ray Tan*"), the accused had pleaded guilty to, *inter alia*, two charges under s 7 of the MDA involving the importation of 14.99g of diamorphine and 1.12g of methamphetamine. The issue was whether the one-transaction rule applied so that the sentences for both charges should run concurrently, given that the diamorphine was imported for the purpose of trafficking while the methamphetamine was imported for the accused's own consumption. This court held that it did, stating (at [17]):

> The Judge in the present case considered that the one-transaction rule did not apply in respect of the First and Second Charges because the drugs in respect of each of the two charges were imported for different purposes: the diamorphine was imported for the specific purpose of passing on to a drug courier whilst the metamphetamine [*sic*] was imported for the Appellant's own consumption ... On closer analysis, however, such reasoning yields, with respect, counterintuitive results. We elaborate by considering a hypothetical situation. If the Appellant had imported the methamphetamine for the purpose of passing it on to a drug courier (the same purpose for which he had imported the diamorphine), the one-transaction rule would apply in his favour. *This, in our view, would be an unsatisfactory application of the one-transaction rule because importing drugs for the purpose of trafficking is more serious than importation of drugs for one's own consumption.* Such a view is founded upon the fact that trafficking in drugs generally carries stiffer penalties as compared to possession and/or consumption of drugs (see the Second Schedule to the Act for the prescribed penalties). ***Given that it is trite that motive in committing an offence is a relevant sentencing consideration*** (see, for example, the Singapore High Court decision *of Zhao Zhipeng v PP* [2008] 4 SLR(R) 879 at [37]), it would, with respect, be wrong, on the facts of this particular case, to reject the one-transaction rule and sentence a less culpable offender to a more severe sentence...
>
> [emphasis added in italics and bold italics]

25 The High Court distinguished this case (at [41] of the Judgment) on the basis that the defence of personal consumption was not raised and addressed by the court in *Ray Tan*. It further noted that although the court had said that an accused's motive for committing an offence is a relevant sentencing consideration, it did not say that motive is *irrelevant* for other purposes (by which the High Court presumably meant the purpose of conviction). With respect, we have some difficulty with this distinction: the issue of whether motive is a relevant factor in sentencing would not even have arisen if the offence itself is not established. In other words, if the importation of drugs for the purpose of personal consumption is not an offence under s 7, then there would be no need to even consider whether an accused who imported drugs for this purpose would merit a lesser sentence. Therefore, although the court did not explicitly address the defence of personal consumption in *Ray Tan*, it had at least *implicitly assumed* that it was not necessary for the Prosecution to establish that the importation of the drugs must be for the purposes of trafficking before there could be an offence under s 7. However, we acknowledge that the court in *Ray Tan* did not expressly consider whether an intent to traffic was a necessary element of an offence under s 7.

26 The defence of personal consumption *was* directly addressed in *PP v Majid bin Abdul Rahman* [2007] SGDC 222 ("*Majid*"). In that case, the accused was charged with importing 1.23 grams of

diamorphine. He argued that he was not guilty of importation because the drugs were meant for his own consumption and not for delivery to anyone else. However, the district judge rejected this argument, stating (at [4]–[6]):

> 4 It was the submission of the defence that even though High Court in [*Ko Mun Cheung (HC)*] had ruled that the statutory definition of the word "import" in Section 2 of the Interpretation Act Cap 1 ... should apply to the word "import" in the Misuse of Drugs Act, the accused in this case, because of the fact that the amount of controlled drugs that he brought into Singapore was only 1.23 grams and because of the drugs were meant for his own consumption should only be considered to have "transported" the controlled drug, and "mere transportation of drug will not amount to trafficking unless it is shown that it is to be delivered to some third person" ([*Ong Ah Chuan*]).
>
> 5 There was nothing wrong with learned counsel's submission with regard to the definition of "transport" in the context of the definition of "trafficking" in Section 2 of the Misuse of Drugs Act. Unfortunately for the accused in this case, the charge against him was not for an offence under Section 5 of the Misuse of Drugs but for an offence of "importing" under Section 7 of the Misuse of Drugs.
>
> 6 The social object to the Misuse of Drugs Act is to prevent the growth of drug addiction in Singapore and the legislature has seen it fit to provide for different penalties for possession, trafficking, importing and other offences under the Act. Counsel for the defence was wrong when he submitted that "the punishments prescribed for trafficking and importing are identical". Whilst the minimum punishments for importing and trafficking in Class A drugs are similar, the minimum punishments for importing and trafficking in Class B and Class C drugs are not the same. The minimum punishments for importing Class B and Class C drugs are higher than for trafficking in the similar drugs ... *As mentioned earlier, the High Court in [Ko Mun Cheung (HC)] has ruled on the definition of "import" in the Misuse of Drugs Act and there was absolutely no reason for the court to agree with defence counsel that an offence under Section 7 of the Misuse of Drugs Act would not be committed unless the importer intended to deliver the controlled drug to other parties.*
>
> [emphasis added]

27 In the Judgment (at [45]), the High Court characterised the district judge's decision in *Majid* as follows:

> In *Majid*, the district judge relied on three reasons in holding that there is a difference in kind between the offence of trafficking and the offence of importation. The first reason was that the case law on trafficking was irrelevant because the charge against the accused was that of importation and not trafficking. The second reason, which can be dismissed immediately as erroneous (see [34] above), was that the High Court in *Ko Mun Cheung (HC)* ([32] supra) decided, implicitly, that personal consumption was not a defence to the offence of importation. The third reason was that the offence of importation carries a higher punishment than trafficking in relation to Class B and Class C controlled drugs, and therefore they are different offences.

In our view, however, the main basis for the district judge's decision was that *Ko Mun Cheung (HC)* had ruled that the definition of "import" in the IA applies to s 7 of the MDA. As we have noted at [6] above, if the IA's definition applies, then the accused's purpose for bringing drugs into Singapore is irrelevant to the question of whether he had imported drugs within the meaning of s 7. Thus, *Ko Mun Cheung (HC)* (together with cases like *Ng Kwok Chun (CA)* and *Nathan Tse*) *had* indeed decided –

implicitly – that trafficking is not an element of the offence of importing under s 7. Thus personal consumption cannot be a defence to the offence of importation, and we respectfully have to disagree with the High Court that the district judge's "second reason" in *Majid* was erroneous.

28 We turn next to consider the relevance of the cases on drug trafficking.

Cases on drug trafficking

29 In deciding that s 7 refers only to importation for the purpose of trafficking, the High Court drew support from the reasoning in *Ong Ah Chuan*, *Lau Chi Sing v PP* [1988] 2 SLR(R) 451 ("*Lau Chi Sing*") and *Ng Yang Sek v PP* [1997] 2 SLR(R) 816 ("*Ng Yang Sek*"), three cases that have interpreted the word "traffic" in the MDA.

30 The word "traffic" is defined in s 2 of the MDA as follows:

> "traffic" means —
>
> (*a*) to sell, give, administer, transport, send, deliver or distribute; or
>
> (*b*) to offer to do anything mentioned in paragraph (*a*),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning;

31 Given that s 2 of the MDA defines traffic to include acts such as "transport" which might not be done for the purpose of trafficking (*eg* a person might be transporting drugs back home for his own consumption), the question was whether the acts listed in s 2 must be done for the purpose of trafficking in order to constitute the offence of trafficking under s 5 of the MDA. In *Ong Ah Chuan*, the Privy Council held that the answer was "Yes". It reasoned as follows (at [10]):

> Even apart from any statutory definition, *the ordinary meaning of the verb "to traffic", in the particular context of trafficking in goods of any kind, imports the existence, either in fact or in contemplation, of at least two parties: a supplier and a person to whom the goods are to be supplied. This concept, involving transfer of possession is reflected in the statutory definition itself. Of the seven verbs used to describe the various kinds of overt acts which constitute trafficking "transport" is sandwiched between "sell, give, administer" which precede it, and "send, deliver or distribute" which follow it.* All of these other verbs refer to various ways in which a supplier or distributor, who has drugs in his possession, may transfer possession of them to some other person. "Transport", although it must involve possession of the drugs by the person who transports them, is the only member of the heptad of verbs that is not inconsistent with the retention of possession of the drugs by him after their transport. It must mean moving the drugs from one place to another; it may mean moving them also to another person but it need not do so. Whether it bears the wider or the narrower meaning depends upon the context in which the verb appears. *In their Lordships' view the immediate context of the verb "transport", to which attention has been drawn, attracts the maxim noscitur a sociis. This, and the fact that it appears in the definition of the verb to "traffic", of which the natural meaning in the context of trafficking in goods involves dealings between two parties at least, and that the evident purpose of the Act is to distinguish between dealers in drugs and the unfortunate addicts who are their victims, all combine to make it clear that "transport" is not used in the sense of mere conveying or carrying or moving from one place to another but in the sense of doing so to promote the distribution of the drug to another.* Supplying or distributing addictive drugs to others is the evil against which s 3 with its draconian penalties is directed.

[emphasis added]

32 The Privy Council's decision was adopted by this court in *Lau Chi Sing*, where the accused was charged with drug trafficking by transporting drugs from Geylang to Changi Airport for the purpose of distributing them in Amsterdam. Relying on *Ong Ah Chuan*, he argued that he was not guilty of trafficking because he did not transport drugs with the intent of distributing them in Singapore. The court affirmed the correctness of *Ong Ah Chuan* but rejected the accused's reliance on it (at [8]–[9]):

> 8 In our judgment the decision in [*Ong Ah Chuan*] does not support the proposition submitted by counsel. The Privy Council in that case had drawn a distinction between the transportation of drugs intended to be retained solely for the transporter's own consumption as contrasted with those intended to be delivered to someone else whether it be the actual consumer or a distributor or another dealer. It is only in the latter case that the offence of trafficking is committed. In making his submission that the delivery or transfer of possession of the drugs must also be intended to take place in Singapore, counsel for the appellant had, in our view, sought to impose an additional ingredient to the offence of trafficking, which is warranted neither by the Privy Council decision nor by the provisions of the Act. ...
>
> 9 In our opinion counsel for the appellant had misunderstood the Privy Council decision in [*Ong Ah Chuan*]. The reference to the purpose for which drugs are being transported was a commonsensible one and was made for the sole reason that otherwise the mere act of transporting drugs would amount to the offence of trafficking under the Act even though the drugs are intended for the transporter's own consumption. *Such a result would be repugnant to the ordinary meaning of the word "traffic" and to the structure of the Act which draws a distinction between the offence of possession and that of trafficking, the latter being punishable with far heavier penalties including, in certain cases, death.*
>
> [emphasis added]

33 The Privy Council's reasoning in *Ong Ah Chuan* was also applied in *Ng Yang Sek*. In that case, the accused, a practitioner of Chinese medicine, was found to possess a total of 17,405.1g of opium containing 165.59g of morphine and was charged with trafficking. The High Court found that the accused had intended to use the opium to produce medicinal plasters and not to supply it to drug addicts. Nonetheless, the High Court held that the accused's intent to sell, give or administer the plasters to potential patients fell within the meaning of "trafficking" and sentenced him to death. On appeal, this court substituted the accused's conviction for trafficking with that for possession, explaining its decision as follows (at [35]–[37] and [41]):

> 35 The central issue raised in this appeal therefore is the definition of "trafficking". As previously mentioned, the trial judge took a literal approach to this question. Before us, the DPP argued that, even if the definition attributed to the term "administer" by the trial judge was wrong, the appellant by his own admission was "selling" or "giving" the opium in the form of medicinal plasters. As also mentioned previously, the crucial issue was whether the appellant's avowed purpose for the opium took his actions out of the meaning of "trafficking".
>
> 36 Although there are no authorities directly on point, in the seminal case of [*Ong Ah Chuan*], the Privy Council declined to interpret the s 2 definition of "trafficking" literally. It was stated by their Lordships that the mere physical conveyance of drugs is not "transporting" under s 2 if it is not accompanied by the ultimate purpose that the drugs be distributed (see also *Tan Meng Jee v PP* [1996] 2 SLR(R) 178). The underlying rationale of these cases is that, if the law does not give

these verbs such an interpretation, there is no distinction between drug dealers and drug addicts engaged in the physical transporting of drugs, the one for distribution and the other for his own consumption. ...

37 *Perhaps another example to illustrate why the courts should not invariably adopt a literal approach concerns the term "administer". The plain meaning of this term need not envisage the transfer of the drug to another person. The appellant could administer the drug to himself and on the face of the s 2 definition, this would be considered "trafficking" as well. The obvious absurdity of such a result precludes its occurrence. Yet another example is the case where a person is arrested outside a neighbourhood police post with the controlled drugs and he manages to rebut the presumption in s 17 by establishing that his intent was to surrender the drugs to the authorities. Surely in such a case that person is not in the act of "giving" the drugs in the sense used by the s 2 definition? The point is that the application of the plain meaning of the s 2 definition of "trafficking" can, and in certain circumstances must, be construed in the light of the purpose of the legislation to avoid injustice.*

...

41 Parliament, as the trial judge correctly pointed out, had "foreseen the need for a very strict control on the possession and movement of drugs to Singapore and also within it". However, in our opinion, this does not lead inexorably to the conclusion that what the appellant was guilty of doing was "trafficking". That he was in possession of a controlled drug and therefore guilty of an offence under s 8 of the Act is, in our opinion, not in doubt. *However, whether he was engaged in "trafficking" is an altogether different question. It is clear to us that the appellant does not fall within the class of offenders which Parliament had in mind when it enacted s 5 of the Act. The opium in the appellant's possession was never meant or even remotely contemplated to be used in a manner associated with drug addiction.* ...

[emphasis added]

34 The above extracts show that the courts had three reasons for deciding that the acts listed in the s 2 definition of "traffic" (in particular the word "transport") had to be performed for the purpose of trafficking to sustain a trafficking charge:

(a) The word "transport" in s 2 is sandwiched between other verbs such as "sell, give, administer" and "send, deliver or distribute" that imply a transfer of possession between two parties. Applying the maxim of *noscitur a sociis*, the word "transport" must mean transport for the purpose of distribution to someone else.

(b) The verbs in s 2 are used to define the word "traffic", which in its ordinary and natural meaning involves dealings between two or more parties. To define those verbs broadly to include cases where there is no intent to give the drugs to another person would be repugnant to the ordinary meaning of "traffic".

(c) The offence of trafficking is meant to target the mischief of supplying or distributing drugs to others as part of the drug trade. Persons who are merely transporting drugs between two locations with no intent of distributing them to others, or persons who do not distribute the drugs in a manner associated with drug addiction (*eg* the distribution of medicinal plasters containing opium) do not fall within the mischief targeted by the offence.

35 It can immediately be seen that the first two reasons do not apply in the present case. Unlike

"transport" in s 2, the word "import" in s 7 is not surrounded by any words that would cast on it a different complexion. Further, the plain and ordinary meaning of "import" is (as defined in s 2 of the IA) to bring something into a country. The word "import" is not used to define any other word – nor is any other word used to define it – that would suggest a departure from this ordinary meaning.

36 As for the third reason, it is applicable here only if the offence of importation were directed solely at the mischief of drug trafficking. But if it were, then there would be no reason to constitute importation as a separate offence; after all, those who import drugs for the purpose of trafficking would always be concurrently guilty of trafficking and can be charged under s 5.

37 In our opinion, too much reliance was placed by the High Court on the views expressed in *Ong Ah Chuan* when the issue under consideration in *Ong Ah Chuan* and that in the present case are distinct. In the former, the issue related to the word "traffic" as defined in the MDA and, in particular, the word "transport" in that definition. In the present case, the issue concerns the word "import" as defined in the IA. If drugs are not intended to be transferred from one person to another, but are intended to be for personal consumption, there can be no question of any trafficking – one cannot traffic with oneself. There has to be two parties. Thus the Privy Council in *Ong Ah Chuan* held that "transport" should be construed accordingly. On the other hand, "import" is a simple English word whose sense is not in doubt, *ie* the bringing of a thing into the country. It does not suggest the involvement of another party.

38 In this regard, it is instructive to consider a case where the word "import" *was* given a more restrictive meaning than that prescribed in the IA. In *Trade Facilities Pte Ltd and others v PP* [1995] 2 SLR(R) 7 ("*Trade Facilities*"), the respondents were charged with selling and importing counterfeit Hennessy XO cognac contrary to s 73 of the Trade Marks Act (Cap 332, 1992 Rev Ed) ("the 1992 TMA") (s 73 of the 1992 TMA has since been amended and is now s 49 of the Trade Marks Act (Cap 332, 2005 Rev Ed)). Section 73 of the 1992 TMA stated:

> Any person who imports, sells or exposes or has in his possession for sale or for any purpose of trade or manufacture, any goods or thing to which a counterfeit trade mark is applied or to which a registered trade mark is falsely applied, shall... be guilty of an offence...

The question arose as to how the word "imports" in that provision should be interpreted. Chief Justice Yong Pung How ("Yong CJ") noted in *obiter* that the meaning of "imports" in s 73 was not necessarily as wide as that given in s 2(1) of the IA – it referred to the act of bringing goods into Singapore *for the purpose of trade or manufacture*. The relevant paragraphs are reproduced below:

> 54 Counsel for the respondent's argument was that as liquor are dutiable goods, the meaning assigned to the word "import" by s 3(1) of the Customs Act (Cap 70) should apply. In my view, this argument has no merit. The Customs Act is concerned with the imposition of customs duties. Thus, whether something is dutiable or not is of utmost importance. The Trade Marks Act has nothing to do with customs duties. Whether something is dutiable or not is therefore irrelevant. It cannot be the case that there is one test for "import" under s 73 for dutiable goods and another for non-dutiable goods.
>
> 55 There is therefore nothing in the subject or context of s 73 which requires the use of the special meaning assigned to the word "import" in the Customs Act. In coming to this conclusion, I have kept in mind the consideration that Singapore also relies on entrepot trade. There may thus be very good policy reasons why Singapore should or should not police the transhipment of goods bearing counterfeit trade marks or the like as they pass through Singapore's free trade zone. However, that is something that Parliament must deal with. If Parliament is of the view that

transhipments through Singapore should not be caught by s 73, then it is open to it to amend the Act by expressly incorporating the Customs Act definition of "import" into the Act.

5 6 *That is not to say that the meaning of "import" in s 73 is necessarily as wide as that provided for in s 2(1) of the Interpretation Act.* If the word "import" in s 73 means simply to bring or to cause to be brought into Singapore, then it would appear that any person who brings into Singapore a counterfeit branded handbag, wallet, watch or the like would have committed an offence under s 73. He or she would then have the burden of proving on a balance of probabilities the defences provided for in s 73. Thus, a Singaporean vacationing with her family in, say Hong Kong, who visits Stanley and purchases a counterfeit branded handbag from one of the stalls there will run foul of s 73 if she takes it with her when she returns with her family to Singapore. I cannot imagine that Parliament intended such an absurd result.

57 Section 73 states that an offence is committed by a person if he "imports, sells or exposes or has in his possession for sale or for any purpose of trade or manufacture" the offending articles. *In my view, s 73 is directed at persons who deal in the course of business, in one way or another, in goods to which a counterfeit trade mark is applied or to which a registered trade mark is falsely applied. It is not aimed at the consumer who uses or merely possesses these goods.* Similarly, it cannot be invoked against the same consumer when he brings the offending article into Singapore merely because he happens to have purchased it abroad. Thus, the words "for sale or for any purpose of trade or manufacture" applies equally to the word "import" in s 73. *A person therefore does not "import" something into Singapore within the meaning of the word in s 73 of the Act unless it is done for the purpose of sale or for any purpose of trade or manufacture.*

[emphasis added]

39 As Yong CJ pointed out, the word "imports" in s 73 of the 1992 TMA appeared as part of the phrase "imports, sells or exposes or has in his possession *for sale or for any purpose of trade or manufacture*", and it was plain from the text of s 73 alone that the section was meant to target those who imported counterfeit goods for the purpose of sale, trade or manufacture. Consequently, Yong CJ was able to conclude that the meaning of the word "imports" in the context of s 73 was narrower than that provided in the IA. But as we have already observed (at [35] above), unlike the 1992 TMA, there is nothing in the MDA to suggest that the word "import" in s 7 should be given a special or narrower meaning.

Indian cases interpreting the word "import"

40 We have also derived assistance from several Indian cases in which the word "import" was interpreted. The word "import" is not defined in the Indian equivalent of our IA, the General Clauses Act (Act No 10 of 1897) (India), and the Supreme Court of India has had multiple opportunities to determine the meaning of that term as used in various statutes.

41 In *Organon (India) Ltd v Collector of Excise* (1995) Supp (1) SCC 53 ("*Organon*"), the issue was whether s 5 of the Opium Act (Act No 1 of 1878) (India) ("the Opium Act") allowed the State of Madhya Pradesh to levy and collect duty as a condition for permitting the export of poppy husks from Madhya Pradesh when the said export was not an export from one State to another State within India but an export across the customs frontier of India to another country. The court's discussion of that issue is not pertinent for present purposes; what is relevant is its view that the definition of "import" and "export" in the Opium Act does not require an element of sale (at [9] and [20]):

9. The expressions 'import' and 'export' have been defined in the Opium Act to "mean respectively to bring into, or take out of, a State otherwise than across any customs frontiers". ...

...

20. ...Section 5 of the Opium Act empowers the State Government to do two things, viz., (i) to make Rules permitting absolutely or subject to the payment of duty or to any other conditions, the possession, transport, import/export and sale of opium and (ii) to make Rules regulating the aforesaid matters relating to opium in the whole or any specified part of the territories administered by such Government. The matters specified in Section 5 are the very same as are specified in Section 4, viz., possession, transport, import/export and sale. (We have already pointed out that import and export as defined in the Opium Act does not mean import into or export from India but import into or export out of a particular State otherwise than across any customs frontiers.) In other words, Section 5 empowers the State Government to permit inter alia export of opium subject to such conditions, including payment of duty, as it may deem appropriate to impose, as part of control and regulation over opium. ***Another feature to note is that import or export, as defined in the Opium Act, does not necessarily involve the element of sale. It is not necessary that the import or export should be occasioned by or result in a sale. Mere movement from one State to another is sufficient to constitute export or import, as the case may be, within the meaning of the Act so long as such movement is not across the customs frontiers. (Sale of opium is dealt with separately from import/export under Sections 4 and 5.)*** Now coming to the other Act, taking opium out of India across the customs frontiers is "export from India" within the meaning of the Dangerous Drugs Act and is governed by Section 7 of the Dangerous Drugs Act and the Rules made thereunder. The Rules under the Dangerous Drugs Act, referred to hereinbefore, specifically provide only two ports from which opium can be exported by sea. They are Bombay and Calcutta. Therefore, any opium to be exported by sea has to first reach either Bombay or Calcutta. Thus, while movement within India from one State to another (not involving crossing of any customs frontiers) is governed by the Opium Act, the movement across the customs frontiers is governed by the Dangerous Drugs Act. ***In all these matters, the element of sale is irrelevant. It is not one of the requirements. Mere movement of goods is enough. The movement may be the result of sale or may not be; that is immaterial.*** Therefore, so far as the movement of poppy husks from Mandsaur District in Madhya Pradesh to the Bombay Port in Maharashtra is concerned, it is an export within the meaning of the Opium Act. It is export from the State of Madhya Pradesh to the State of Maharashtra. The "export from India" begins only from the Port of Bombay and is governed by the Dangerous Drugs Act. ...

[emphasis added in italics and bold italics]

42 In *Gramophone Co of India Ltd v Birendra Bahadur Pandey* (1984) 2 SCC 534 ("*Gramophone*"), the Supreme Court had to decide how "import" should be interpreted for the purposes of copyright legislation. Under s 51(b)(iv) of the Copyright Act (Act No 14 of 1957) (India), copyright in a work was deemed to be infringed where a person "imports (except for the private and domestic use of the importer) into India" any infringing copies. The issue arose as to whether a person, by bringing infringing copies through India into Nepal, had "imported" infringing copies into India. The Supreme Court held that the word "import" means "bringing into India from outside India", and that it is not limited to importation for commerce only, but also includes importation for transit across the country (at [27], [29] and [32]):

27. The question is what does the word "import" mean in Section 53 of the Copyright Act? The word is not defined in the Copyright Act though it is defined in the Customs Act. But the same

word may mean different things in different enactments and in different contexts. It may even mean different things at different places in the same statute. It all depends on the sense of the provision where it occurs. Reference to dictionaries is hardly of any avail, particularly in the case of words of ordinary parlance with a variety of well-known meanings. Such words take colour from the context. ...

...

29. It was submitted by the learned counsel for the respondents that where goods are brought into the country not for commerce, but for onward transmission to another country, there can, in law, be no importation. *It was said that the object of the Copyright Act was to prevent unauthorised reproduction of the work or the unauthorised exploitation of the reproduction of a work in India and this object would not be frustrated if infringing copies of a work were allowed transit across the country. If goods are brought in, only to go out, there is no import, it was said. It is difficult to agree with this submission though it did find favour with the Division Bench of the Calcutta High Court, in the judgment under appeal.* ***In the first place, the language of Section 53 does not justify reading the words "imported for commerce" for the words "imported". Nor is there any reason to assume that such was the object of the Legislature.*** We have already mentioned the importance attached by international opinion, as manifested by the various international conventions and treaties, to the protection of copyright and the gravity with which traffic in industrial, literary or artistic property is viewed, treating such traffic on par with traffic in narcotics, dangerous drugs and arms. In interpreting the word "import" in the Copyright Act, we must take note that while the positive requirement of the Copyright Conventions is to protect copyright, negatively also, the Transit Trade Convention and the bilateral Treaty make exceptions enabling the Transit State to take measures to protect copyright. If this much is borne in mind, it becomes clear that the word "import" in Section 53 of the Copyright Act cannot bear the narrow interpretation sought to be placed upon it to limit it to import for commerce. It must be interpreted in a sense which will fit the Copyright Act into the setting of the international conventions.

...

32. We have, therefore, no hesitation in coming to the conclusion that the word "import" in Sections 51 and 53 of the Copyright Act means "bringing into India from outside India", that it is not limited to importation for commerce only, but includes importation for transit across the country. Our interpretation, far from being inconsistent with any principle of international law, is entirely in accord with International Conventions and the Treaties between India and Nepal. And, that we think is as it should be.

[emphasis added in italics and bold italics]

43 The decision in *Gramophone* may usefully be contrasted with the case of *Central India Spinning and Weaving and Manufacturing Company Ltd v Municipal Committee, Wardha* [1958] SCR 1102 ("*Central India Spinning*"). Section 66(1)(o) of the C.P. and Berar Municipalities Act 1922 (Act No 2 of 1922) (India) empowered the municipalities to impose "a terminal tax on goods or animals imported into or exported from the limits of a municipality". The Supreme Court held that phrase "terminal tax" indicated that the bringing of goods into a municipality in transit to another municipality did *not* count as an "import" within the meaning of s 66(1)(o) (at 1108, 1111, 1113, 1116 and 1121):

The respondent's counsel sought to support his argument by referring to the following cases decided by various Indian High Courts where the words "import" and "export" were construed as

meaning "bring in" or "take out of or away from" and it was also held that goods in transit are also covered by the words "imported into" or "exported from"

...

In none of these cases was the argument as to the qualification stemming from the use of the words "terminal tax" considered nor was the signification of the word "terminal" as a prefix to the word tax discussed.

...

By giving to the words "imported into or exported from" their derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, the decided cases in India have ascribed too general a meaning to these words which it appears from the setting, context and history of the clause was not intended. *The effect of the construction of "import" or "export" in the manner insisted upon by the respondent would make railborne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both inter State and intra State. It is hardly likely that that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation, to be avoided.*

...

It is also a recognised principle of construction that general words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act. There is no evidence that the actual object of the Act in the present case was to extend the powers of the Municipalities to imposing the tax on articles which were in the course of transit.

...

We are, therefore, of the opinion that the terminal tax under s. 66(1)(o) is not leviable on goods which are in transit and are only carried across the limits of the Municipality, and would therefore allow this appeal, reverse the decision of the Nagpur High Court.

[emphasis added in italics and bold italics]

44 These cases provide an excellent illustration of the circumstances that courts have taken into account when interpreting the word "import". First, where the word has been expressly defined by the legislature, courts would be slow to read into it other requirements that do not appear in the definition (*Organon*). Second, other words in the statute might suggest that Parliament had a more restricted meaning of "import" in mind (*Central India Spinning*). Conversely, where there is no material to support the view that Parliament had a different meaning of "import" in mind, courts have been unwilling to depart from its plain meaning of bringing something into the country (*Gramophone*).

45 We now turn to consider whether there is anything in the parliamentary speeches on the MDA to indicate that Parliament had intended for a different meaning of "import" to apply.

Parliamentary speeches on the MDA

46 The predecessor of the MDA was the Misuse of Drugs Act 1973 (Act 5 of 1973) ("the 1973 MDA"). The objects behind the enactment of the 1973 MDA were explained in Parliament by the then Minister for Home Affairs and Education, Mr Chua Sian Chin ("Mr Chua"), as follows (*Singapore Parliamentary Debates, Official Report* (16 February 1973) vol 32 at cols 414–418):

> This Bill is a consolidation of the Dangerous Drugs Act enacted in 1951 and the Drugs (Prevention of Misuse) Act of 1969. It also incorporates additional provisions to provide for a firm and extensive control on certain dangerous and harmful drugs of addiction as well as heavier penalties. These drugs, defined as 'controlled drugs' in this Bill, are known to the pharmacologist as hallucinogens, narcotic analgesics, central nervous system stimulants and tranquillisers. The Dangerous Drugs Act was enacted about 21 years ago and the controls provided therein are grossly inadequate for the 70's, with the introduction of a host of new drugs of medical value if properly used.
>
> Control has been brought in line with those in force in other countries closely concerned with the spread of the addictive use of such drugs within their own countries and the increased international traffic which supplies such demands. The different categories of control as recommended by the United Nations have been incorporated into this Bill.
>
> ...
>
> The ill-gotten gains of the drug traffic are huge. The key men operating behind the scene are ruthless and cunning and possess ample funds. They do their utmost to push their drugs through. Though we may not have drug-trafficking and drug addiction to the same degree as, for instance, in the United States, we have here some quite big-time traffickers and their pedlars moving around the Republic selling their evil goods and corrupting the lives of all those who succumb to them.
>
> *They and their trade must be stopped. To do this effectively, heavy penalties have to be provided for trafficking.* Clause 15 specifies the quantities of controlled drugs which, if found in the possession of a person unless the contrary is proved, will be presumed to be in his possession for the purposes of trafficking.
>
> The Second Schedule to the Bill shows the various penalties for offences committed under the Bill. For unauthorised traffic in a Class A controlled drug, for example, morphine, opium, heroin, the maximum sentence is 20 years or $40,000 or both, and ten strokes of the rotan. The heaviest penalty will apply to those convicted of unauthorised trafficking in a Class A controlled drug to persons under the age of 18 years. For this offence a maximum penalty of 30 years or $50,000 or both, and 15 strokes of the rotan, and a minimum penalty of five years or $10,000 or both, and three strokes of the rotan have been provided. The existing law on dangerous drugs provides for the offence of trafficking, but there is no distinction as regards the age of the person to whom the drugs are sold. The penalties for the offence of trafficking in the existing law are $10,000 or five years, or both. These penalties are obviously totally inadequate as deterrents.
>
> ...
>
> Members of this House will, however, note that it is not all punishment written into this Bill. *A clear distinction has been made between the drug addict and the trafficker and pedlar.* I am moving an amendment at the Committee Stage to remove the provision of a minimum sentence of two years for a second or subsequent offence for smoking, self-administering or consuming a controlled drug as provided in the Second Schedule to clause 29, which was inserted as a result

of an oversight. For those addicts who wish to stop this vicious habit, there are provisions under clause 33(3) for them to volunteer for treatment at an approved institution. Any statement given for the purpose of undergoing treatment will not be admissible as evidence against him in any subsequent prosecution. Anyone who has been addicted to any of the controlled drugs and especially those who have had their first acquaintance with such a drug can take advantage of this provision to have himself rehabilitated. ...

[emphasis added]

47 The 1973 MDA was amended in 1975 via the Misuse of Drugs (Amendment) Act (Act 49 of 1975) to enhance the penalties for various offences. Most significant was the introduction of the mandatory death sentence for those found guilty of manufacturing, importing or trafficking in large quantities of specified drugs. Mr Chua justified the amendments on the following basis (*Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at cols 1381–1382):

Heroin is one of the most potent and dangerous drugs. In the first half of 1974 only nine out of 1,793 drug abusers arrested consumed heroin. In the corresponding period this year 1,007 out of 1,921 drug abusers arrested consumed heroin. Thus the number of heroin abusers arrested increased by almost 112 times in 12 months. This is an explosive increase by any reckoning. Equally significant is the fact that the number of traffickers arrested for dealing in heroin had also increased from six in the first half of 1974 to 26 in the corresponding period this year.

These statistics show clearly that existing penalties under the Misuse of Drugs Act, 1973, have not been a sufficient deterrence to traffickers. In 1974 the Criminal Law (Temporary Provisions) Act was invoked to detain traffickers and financiers, and 31 major traffickers and financiers have been detained so far. Despite this threat of indefinite detention, trafficking is still rife. This is because it is lucrative and syndicates are prepared to look after the interests of traffickers and their dependants whenever they are caught and imprisoned.

Clause 13 of this Bill, *therefore*, seeks to amend the Second Schedule of the Misuse of Drugs Act, 1973, so that the death penalty will be imposed for the unauthorised manufacture of morphine and heroin irrespective of amounts involved. *The death penalty will also be imposed for the unauthorised import, export or trafficking of more than 30 grammes of morphine or more than 15 grammes of heroin.*

[emphasis added]

48 On the basis of these ministerial speeches, the High Court ruled that the IA's definition of "import" (which would preclude the defence of personal consumption) is incompatible with the legislative purpose of the MDA to "maintain the distinction between the more harmful activity to the general public of a drug trafficker and the less harmful activity of a drug addict bringing in drugs for his own consumption" (the Judgment at [50]).

49 Likewise, counsel for the Respondent, Mr Abraham Vergis ("Mr Vergis"), has referred extensively to ministerial speeches on the MDA to make the point that Parliament has consistently equated drug importation with drug trafficking. For example, Mr Vergis cites the following comments made by Deputy Prime Minister and Minister for Home Affairs, Mr Teo Chee Hean ("DPM Teo"), on the 2012 amendments to the MDA (*Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89):

To restrict supply, we have adopted a highly deterrent posture against drug trafficking. In 1975, we introduced the death penalty as a punishment for drug trafficking. Under our laws, anyone

who traffics drugs is liable for the death penalty, from syndicate leaders, to distributors, to couriers who transport drugs, and pushers who sell drugs, as long as the quantity of drugs involved is above the stipulated thresholds.

...

Therefore, we will maintain the mandatory death penalty for drug traffickers, in most circumstances. In particular, the mandatory death penalty will continue to apply to all those who manufacture or traffic in drugs – the kingpins, producers, distributors, retailers – and also those who fund, organise or abet these activities. By their actions in the drug trade, these offenders destroy many lives. They know they are dealing with drugs and the consequences of their actions if they are caught and convicted.

[emphasis added]

Another example is taken from the second reading of the Misuse of Drugs (Amendment) Bill (Bill 27 of 2012), where DPM Teo said (*Singapore Parliamentary Debates, Official Report* (12 November 2012) vol 89):

We will enhance punishments for repeat drug traffickers. Currently, there are enhanced punishment provisions for repeat drug consumption in the MDA. However, there is no enhanced punishment for repeat trafficking offences. Clause 13 amends section 33 by providing enhanced punishments for a person who commits a subsequent offence under section 5(1), that is, trafficking *or section 7, that is, importation or exportation.*

[emphasis added]

50 While we acknowledge that these ministerial statements show that the main concern of Parliament in imposing deterrent sentences was to combat drug trafficking, the question that remains is still whether they necessarily show that Parliament had intended s 7 of the MDA to apply *only* to persons who import drugs for the purposes of trafficking. Having carefully considered the relevant speeches, it is our view that no such inference can really be drawn. The reason why Mr Chua and DPM Teo appear to have equated drug importation with drug trafficking is because they were discussing the imposition of the mandatory death penalty for the trafficking and importation of large quantities of drugs. Under the MDA, individuals who deal with such large quantities of drugs are presumed to be trafficking in them, and it is therefore understandable for the ministers to have used "trafficking" as shorthand to refer to both trafficking and importation. In our judgment, their speeches do not amount to a clear expression of Parliament's intention to ascribe a special meaning to the word "import" in s 7 of the MDA that is different from that in s 2(1) of the IA.

51 Furthermore, while it is true that Parliament intended to draw a distinction between drug traffickers and drug addicts, it does not necessarily follow that those who import drugs for the purpose of personal consumption should not be convicted under s 7. The distinction could still be maintained by convicting such offenders under s 7 but imposing more lenient sentences on them than that imposed on offenders who import larger quantities of drugs for the purpose of trafficking (subject to the mandatory minimum sentences, which we will turn to shortly). There is no inherent inconsistency between the IA's definition of "import" and the legislative intent behind the MDA as expressed in Parliament.

The MDA's scheme of punishments

Differences in the penalties for trafficking and importation

Differences in the penalties for trafficking and importation

52 The following table sets out the penalties for the possession, importation and trafficking of Class A drugs, Class B drugs, Class C drugs and diamorphine (see the Second Schedule of the MDA):

Offence	Punishment			
	Class A drug	Class B drug	Class C drug	Diamorphine
Possession – s 8(a)	Maximum 10 years and $20,000 (minimum 2 years for second or subsequent offence of possession)			
Trafficking – s 5	Maximum 20 years and 15 strokes Minimum 5 years and 5 strokes	Maximum 20 years and 10 strokes Minimum 3 years and 3 strokes	Maximum 10 years and 5 strokes Minimum 2 years and 2 strokes	10-15g: Maximum 30 years or life and 15 strokes Minimum 20 years and 15 strokes >15g: Death
Importation – s 7	Maximum 30 years or life and 15 strokes Minimum 5 years and 5 strokes	Maximum 30 years or life and 15 strokes Minimum 5 years and 5 strokes	Maximum 20 years and 15 strokes Minimum 3 years and 5 strokes	10-15g: Maximum 30 years or life and 15 strokes Minimum 20 years and 15 strokes >15g: Death

53 It can be seen that the penalties for drug importation are generally harsher than those for drug trafficking. In the view of the High Court, this is a reason to read s 7 narrowly to mean the bringing of drugs into Singapore for the purpose of trafficking. It reasoned as follows (at [53]–[54]):

> 53 What then of the third reason given by the district judge in *Majid* ([43] supra) that the offence of importation is different and distinct from the offence of trafficking because the punishment for the first offence is higher than the second offence with respect to Class B and Class C controlled drugs? Why should there be a difference in the punishments and how can this difference be accounted for except on the basis that they are two entirely different offences? ... *In my view, a reasonable explanation for the difference, and one that goes to the heart of the law in combating the spread of drug consumption within a State, is that the physical transfer of drugs from one State into another State increases the stock of drugs in the second State and thereby potentially increases the harm to its residents in making available for trafficking more drugs than before.* ***Therefore, the offence of importation is potentially more harmful than the offence of trafficking an existing stock or supply of drugs which reduces that stock or supply over time.*** As the exportation of drugs to another State is the mirror image of importation (with the difference being one of perspective), the same explanation applies equally to the offence of exportation.

> 54 However, the higher potential harm of importation as compared to trafficking does not justify interpreting the offence of importation as being distinct from the offence of trafficking which is not committed where the accused person transports drugs for the purpose of personal consumption (as the Privy Council held in [*Ong Ah Chuan*]). First, Parliament had clearly intended to distinguish between drug dealers and drug addicts (see [50] above) and it is consistent with, and would further, this intention to interpret the offence of importation as being committed only where the accused person had imported the drugs for the purpose of trafficking. *Secondly, the higher potential harm of importation only arises where the drugs are in fact imported for the purpose of trafficking. ... The extent of the harm caused by such importation depends on the purpose of the importation.* ***Ex hypothesi, there is no increase in the stock of drugs for trafficking if the accused person imports for personal consumption.***
>
> [emphasis added in italics and bold italics]

54 While we agree with this rationale for penalising cross-border trafficking more severely (*viz*, because it increases the stock of drugs available for trafficking in Singapore), we do not see why the same rationale should not apply where drugs are imported for personal consumption. This is because there *is* a difference between a person who obtains drugs from within Singapore for his own consumption and a person who imports drugs from overseas for the same purpose – in the former case, the stock of drugs within Singapore available for trafficking is *reduced*, while in the latter, the stock of drugs is unchanged and remains available for the use of other drug addicts. There is thus a rational basis for prescribing heavier penalties for those who import drugs for their own consumption vis-à-vis those who obtain such drugs from within Singapore for their own consumption and thereby deplete the local stock of drugs.

55 Furthermore, the DPPs have suggested other reasons (in our view rightly) for the heavier penalties on drug importation. As they point out in their written submissions:

> [It] should not be assumed that drug trafficking within Singapore is necessarily more harmful than moving drugs across national borders for personal consumption. Drugs may be cheaper and more readily available outside Singapore. The enforcement efforts to render it difficult for addicts to obtain drugs locally may be thwarted if the penalties for bringing drugs into Singapore are not sufficiently severe to deter addicts from seeking to bring in their own drug supplies from other countries.

56 It is also possible that the legislature considers the prospect of fresh drugs infiltrating Singapore's borders to be such a great menace that it justifies the blanket imposition of tough penalties to deter drug importation, regardless of the purpose for which they are imported. Evidence of this attitude can be found in the following statement by Mr Chua while moving the Misuse of Drugs Bill 1972 (*Singapore Parliamentary Debates, Official Report* (16 February 1973) vol 32 at col 415):

> Singapore, by its geographical position and development, is now a strategic centre of communication and international trade. Whilst welcoming trade, visitors and tourists, *we must at the same time be constantly on the alert for the trafficker, the addict and the hidden consignment of controlled drugs.*
>
> [emphasis added]

During the debate over the 1975 amendments to the MDA, Mr Chua again emphasised Singapore's vulnerability to cross-border drug flows (*Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at cols 1381–1382):

> Singapore, as it is situated, is in *a rather vulnerable position*. The "Golden Triangle" straddling Thailand, Laos and Burma, which is the source of supply of narcotics, is not far from Singapore. Being a busy port, an important air communication centre and an open coastline easily accessible from neighbouring countries, it *makes detection of supplies of narcotics coming in difficult*.
>
> [emphasis added]

57 Consequently, there are plausible reasons to impose harsher penalties on the act of importation even where the drugs are brought in for purposes other than trafficking, and it would not be correct to assume that Parliament regarded drug importation as merely an aggravated form of trafficking.

The significance of a mandatory minimum sentence for drug importation

58 Mr Vergis emphasised that a conviction for drug importation – regardless of the amount imported – carries a mandatory minimum sentence of 5 years' imprisonment and 5 strokes of the cane (for Class A drugs), as compared to the sentencing benchmark of about 12 months for the possession of small quantities of a Class A drug (*eg* 0.01g of diamorphine, the amount that the Respondent was charged with importing). He submitted that Parliament could not have intended to visit such severe punishments on drug consumers who bring trace amounts of drugs into Singapore for their own consumption. To buttress his submission, Mr Vergis referred us to three foreign cases where the courts had to interpret legislation governing the exportation, importation and possession of drugs. While the courts in all three cases construed the provisions expansively (*ie* in a manner that was less favourable to the accused), they appeared to be influenced by the fact that the offences in question did not carry a minimum penalty.

59 In *Attorney General v Lau Chi-sing* [1987] HKLR 703, the Hong Kong Court of Appeal had to decide whether a person taking drugs out of Hong Kong for his own consumption was guilty of trafficking in drugs, an offence under s 4 of the Dangerous Drugs Ordinance (Cap 134) (HK) ("the DDO"). Section 2 of the DDO defined "trafficking" to include exporting a dangerous drug from Hong Kong, while "export" was defined as "to take or cause to be taken out of Hong Kong or any other country, as the case may be, by land, air or water". The court held by a majority that the answer was in the affirmative. Silke JA explained the court's decision as follows (at 707–708):

> I accept Mr. McCoy's submission that [*Ong Ah Chuan*] can be distinguished from this instant case. Our definition of "trafficking" starts with reference to importing and exporting, goes on to consider procuring, supplying and then refers to:
>
> > "or otherwise dealing in or with the dangerous drug"
>
> It is not a case, as in the Singapore legislation, of a word being, as Lord Diplock put it, "sandwiched between verbs" which referred to various ways in which a supplier or distributor who has drugs may transfer possession of them to some other person.
>
> The definition of "export", combined with the terms of the definition of trafficking as I construe them, extends, in the Hong Kong context, Lord Diplock's "ordinary meaning of the verb to traffic".
>
> ...
>
> The Ordinance is intended to deal with all offences concerning dangerous drugs. If a person takes or causes to be taken dangerous drugs out of Hong Kong then he is exporting them and it matters not that he intends to use the unlawful substance for his own consumption once he

leaves the Territory. *It is in my view clear that while quantity may go to mitigation of sentence, it is not a defence to the charge once the knowing possession and the taking out have been proved*...

It follows therefore that a conviction for exporting should have been come to in this case but *it was open to the trial judge, if he believed that this substantial quantity was in fact for the Respondent's own consumption, to reflect that belief in sentencing the offender.*

[emphasis added]

60 In *United States of America v Robert Alan Probert* 737 F Supp 1010 (ED Mich, 1989) ("*Robert Probert*"), the issue was whether Title 21 United States Code Section ("21 USC §") 952(a), which makes it unlawful to import drugs into the United States, covers the situation where an individual imports drugs for his personal use. 21 USC § 951(a)(1) defines the term "import" as "any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States)". The defendant contended that 21 USC § 952(a) was meant to prohibit importation for a commercial purpose only. The court disagreed, holding as follows (at 1007):

The language of the statute is clear and unambiguous. It prohibits the "bringing in," 21 USC § 951, of any controlled substance into the United States. For this Court to add to the plain meaning of the statute a requirement that such "bringing in" be for a "commercial purpose," as suggested by defendant, would, in this Court's opinion, be adding language to the statute that plain and simply is not there.

It is not the function of this Court to legislate. *If it was the intent of Congress to apply Section 952 to only those individuals who import for commercial purposes, Congress could have easily and clearly said so.* Congress has in other legislation, distinguished between conduct that only involved possession and conduct which involved more than possession.

...

In adopting the legislation prohibiting the importation of controlled substance in Schedule II, Congress has set forth the penalty, and in setting forth the penalty, Congress set forth no minimum penalty. Congress has, with regard to other statutes, set forth a minimum penalty. *Had Congress set forth a significant minimum penalty, this Court might be more persuaded that Congress was intending only to reach those seriously involved in drug trafficking.*

At the time it adopted this law, Congress left it to the Court to impose the appropriate sentence. In arriving at the appropriate sentence, the Court could, of course, consider, among other factors, as the U.S. Attorney has acknowledged, the extent of the defendant's involvement in the crime.

I recognize that, since the adoption of this statute, sentencing guidelines have been adopted and that to some extent these guidelines affect or play a part in the sentencing. *However, at the time this legislation was passed, there was nothing, in this Court's opinion, that would restrict the Court's determination whether to impose a minimum penalty for a minor involvement or a maximum penalty for a significant involvement.*

[emphasis added]

61 Finally, we were referred to *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256. The issue there was whether the accused had violated s 1(1) of the Drugs (Prevention of Misuse) Act 1964 (c 64) (UK) – which made it unlawful for a person to "have in his possession" a prohibited substance – where he was in possession of a parcel and knew that it contained something, but did not know that it contained prohibited drugs. The House of Lords held that he had. However, Lord Pearce noted as follows (at 306):

> Had there been a minimum penalty imposed, as under the Canadian Act considered in Beaver v. The Queen [1957] S.C.R. 531, that would have been a strong argument in favour of the offence not being absolute. But here there is no minimum penalty. In an appropriate case the judge may inflict no penalty.

62 We agree that the presence of a minimum penalty is relevant to deciding how a penal provision should be construed – where the provision could reasonably be read in two or more different ways, the fact that it carries a harsh minimum penalty might persuade a court that Parliament had intended for the narrower construction to prevail. However, where the disputed word or phrase is not only plain and unambiguous in itself, but has further been expressly assigned its plain meaning by an interpretation section or statute (as is the case with the word "import" in s 7 of the MDA), it becomes more difficult for the court to conclude that Parliament did not intend for those words to be given their plain meaning. As Rajah JA observed in *PP v Low Kok Heng* [2007] 4 SLR(R) 183 ("*Low Kok Heng*") at [52], "it is crucial that statutory provisions are not construed, in the name of a purposive approach, in a manner that goes against all possible and reasonable interpretation of the express literal wording of the provision".

63 Consequently, the evidence of contrary legislative intent will have to be very compelling in order for a court to depart from the ordinary meaning of such a provision. In the present case, although we accept that it might appear harsh to apply the mandatory minimum sentence of 5 years and 5 strokes to someone who brings small quantities of heroin into Singapore for his own consumption, it is not, in our judgment, so inexplicable or unreasonable as to compel the conclusion that Parliament must have intended s 7 of the MDA to apply only to those who import drugs for the purpose of trafficking. It must be noted that Parliament appears to have considered the question of mandatory minimum sentences very carefully. As DPM Teo noted during the debate on the 2012 amendments to the MDA (*Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89):

> Sir, when Parliament sat in 1975 to consider the drug problem, they were faced with a serious drug situation which was threatening to overwhelm Singapore. They weighed the damage that drugs and those who traffic in drugs were doing to our society. They decided to institute tougher laws and penalties, coupled with strong enforcement.
>
> ...
>
> Sir, as Mr Shanmugam has pointed out, *it is the responsibility of Parliament to decide what acts should be criminalised, and the importance and emphasis to be placed on each crime.* Based on the seriousness of the crime, and the damage it does to society and to the victims, Parliament then provides an appropriate penalty framework. *For some serious crimes, due to the potential harm that they cause and to register society's disapprobation, it is necessary to send a deterrent signal by providing for minimum or mandatory sentences. This, by their nature, limits the degree of discretion that the courts have in deciding on sentences. Severe penalties are not something which the Government chooses to impose lightly, but only after careful consideration of the nature of the act and consequences of doing so.*

[emphasis added]

64 We do not think that the court should rewrite the law just because the sentence imposed on the Respondent on account of the regime of minimum sentence may appear harsh on the present facts (as the quantum of the drugs imported was so minute). How the word "import" in s 7 should be interpreted should not depend on the weight of the drugs that happen to be involved in a given case. It would be seen from the statement of DPM Teo above that Parliament had carefully calibrated the sentences it prescribed for the various offences, including the regime of minimum sentences. Parliament having deliberately adopted the definition of "import" set out in the IA would have appreciated that the minimum sentence would be applied even where the importation was in relation to a minute quantity of drugs. There is nothing in the parliamentary debates which suggests that Parliament had regarded the act of importing drugs into Singapore for personal consumption as being less pernicious than trafficking in Singapore. What is clear from all the statements made by the ministers in Parliament over the years is that we have toughened our stand in our fight against the scourge of drugs. We would reiterate (see [11] above) that if it was Parliament's intention for trafficking to be a necessary element of the offence of importation under s 7, it could easily have so provided (see also the views of US court in *Robert Probert* quoted in [60] above).

The strict construction rule

65 Mr Vergis submitted that, applying the strict construction rule, any ambiguity in s 7 of the MDA should be resolved in favour of the accused. This is especially so in the light of the fact that s 7 carries extremely harsh penalties.

66 In *Low Kok Heng*, Rajah JA explained that the strict construction rule should only be used as a last resort where all other interpretive tools (in particular, the purposive approach) have failed to resolve the ambiguity in a provision (at [38] and [57]):

> 38 The modern local position on the construction of penal statutes is appositely summarised by Yong Pung How CJ in *Forward Food Management* [[2002] 1 SLR(R) 443] at [26] in the following terms:
>
> > [T]he strict construction rule is only applied to ambiguous statutory provisions as a tool of last resort. The proper approach to be taken by a court construing a penal provision is to first consider if the literal and purposive interpretations of the provision leave the provision in ambiguity. It is only after these and other tools of ascertaining Parliament's intent have been exhausted, that the strict construction rule kicks in in the accused person's favour.
>
> To my mind, this is decidedly the most appropriate approach to adopt, particularly in the light of the principle of statutory construction of statutes endorsed by Parliament in the Interpretation Act (Cap 1, 2002 Rev Ed), as discussed below.
>
> ...
>
> 57 To summarise, s 9A of the Interpretation Act mandates that a purposive approach be adopted in the construction of all statutory provisions, and allows extrinsic material to be *referred to, e*ven where, on a plain reading, the words of a statute are clear and unambiguous. The purposive approach takes precedence over all other common law principles of interpretation. However, construction of a statutory provision pursuant to the purposive approach stipulated by s 9A is constrained by the parameters set by the literal text of the provision. *The courts should confine themselves to interpreting statutory provisions purposively with the aid of extrinsic*

material within such boundaries and assiduously guard against inadvertently re-writing legislation. Counsel should also avoid prolonging proceedings unnecessarily by citing irrelevant extrinsic material to support various constructions of a statutory provision; this would be tantamount to an abuse of the wide and permissive s 9A(2) of the Interpretation Act. The general position in Singapore with respect to the construction of written law should be the same whether the provision is a penal or civil one. *Purposive interpretation in accordance with s 9A(1) of the Interpretation Act is the paramount principle of interpretation even with respect to penal statutes; it is only in cases where penal provisions remaining ambiguous notwithstanding all attempts at purposive interpretation that the common law strict construction rule may be invoked.*

[emphasis added]

67 In our view, there is simply no scope for the strict construction rule to operate in this case. As we have said, the meaning of s 7 of the MDA is plain and unambiguous on its face. Moreover, the word "import" is expressly defined in s 2(1) of the IA, and we have decided that there is no basis for departing from this definition. Consequently, neither the purposive approach nor the strict construction rule would allow us to construe s 7 as requiring the importation of drugs to be for the purpose of trafficking.

Can it be a defence that the accused did not import drugs for the purpose of trafficking?

68 In the alternative, Mr Vergis submitted that even if the intent to traffic cannot be read as an element of the offence of drug importation, we should at least hold that it is a good *defence* to a s 7 charge for the accused to prove that the drugs were imported for a purpose other than trafficking. Here, it is apposite to refer to s 107 of the Evidence Act (Cap 97, 1997 Rev Ed):

Burden of proving that case of accused comes within exceptions

107. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code (Cap. 224), or within any special exception or proviso contained in any other part of the Penal Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

69 In our judgment, although it appears to be an attractive compromise to hold that proof that drugs were not imported for the purpose of trafficking is a defence to a s 7 charge, to do so would amount to judicial legislation, since no such proviso or exception can be found in the MDA. Any reform in this regard will have to come from Parliament.

Conclusion

70 For the above reasons, we hold that the Question should be answered in the negative, *viz*, s 7 of the MDA does *not* require the Prosecution to prove that the accused imported the controlled drug for the purpose of trafficking in order to secure a conviction under that section.

71 Under s 397(5) of the CPC, this court, in hearing and determining any questions referred, may make such orders as the High Court might have made as this court considers just for the disposal of the case. Accordingly, we set aside the orders at [66] of the Judgment (where the High Court set aside the Respondent's conviction and remitted the case to the District Court for a new trial) and dismiss the Respondent's appeal against his sentence, given that his sentence of 5 years'

imprisonment and 5 strokes of the cane is the mandatory minimum sentence for his offence of importing a Class A drug.

72 Finally, we would like to thank the DPPs and counsel for the Respondent (who took on this case *pro bono*) for their able assistance in this case.