Public Prosecutor v Low Kok Heng
[2007] SGHC 123

Case Number : MA 150/2006

Decision Date : 31 July 2007

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Vincent Leow (Attorney-General's Chambers) for the appellant; Foo Maw Shen and Ong Wei Chin (Yeo Wee Kiong Law Corporation) for the respondent

Parties : Public Prosecutor — Low Kok Heng

Insolvency Law – Bankruptcy – Offences – Undischarged bankrupt obtaining credit without disclosing bankruptcy status – Whether defence of innocent intention satisfied – Sections 141(1)(a), 133 Bankruptcy Act (Cap 20, 2000 Rev Ed)

Statutory Interpretation – Construction of statute – Purposive approach – Whether strict construction rule of penal statutes applicable

Statutory Interpretation – Construction of statute – Whether "or" could mean "and" – Section 9A Interpretation Act (Cap 1, 2002 Rev Ed)

Statutory Interpretation – Interpretation act – Ambiguity – Extrinsic aids – Purposive approach – Whether purposive approach applicable – Whether extrinsic aids could be relied upon – Section 9A Interpretation Act (Cap 1, 2002 Rev Ed)

31 July 2007

V K Rajah JA:

1 The penal provisions of the Bankruptcy Act (Cap 20, 2000 Rev Ed) ("the Act") play a pivotal role in the effective administration of bankrupt estates through the designed sanctions. These provisions are intended to safeguard the interests of a bankrupt's creditors and the wider public in so far as these diverge from those of the bankrupt. Among other things, these provisions:

(a) prescribe and punish conduct which impedes or hinders the administration of estates;

(b) promote compliance with the prescribed legislative policy and obligations imposed by the Act;

(c) protect creditors from inappropriate behaviour by a bankrupt that might result in diminished dividends from an estate; and

(d) protect the public from being misled into assuming uninformed risks in their dealings with undischarged bankrupts.

Given the context of criminal offending, it is imperative and a matter of considerable importance to clearly delineate the scope and operation of these bankruptcy offences, as well as any possible defences that might avail a bankrupt accused of any such offences. The instant case concerns one such offence and raises important issues concerning the operation and applicability of the defence of innocent intention in the context of the Act.

2 The respondent, an undischarged bankrupt, faced a total of seven charges: a single charge of directly participating in the management of a company while remaining an undischarged bankrupt, without leave of the High Court or the written permission of the Official Assignee pursuant to s 26(1) of the Business Registration Act (Cap 32, 2004 Rev Ed); and six further charges for obtaining credit without disclosing that he was a bankrupt as mandated by s 141(1)(*a*) of the Act. The respondent claimed trial to all seven charges. He was convicted on the single charge under the Business Registration Act and sentenced to a term of imprisonment of six weeks. As for the remaining six charges, he was acquitted under s 141(1)(*a*) of the Act by the District Court. I have allowed the Prosecution's appeal against such an acquittal and now set out my grounds of decision.

The facts

3 On 24 January 2003, the respondent was adjudicated a bankrupt. He was officially notified of his duties and responsibilities as an undischarged bankrupt at the Insolvency and Public Trustee's Office ("IPTO") on 1 April 2003. To date, the respondent remains a bankrupt.

4 Prior to being adjudged a bankrupt, the respondent was in the renovation business from around 1990. He was conducting his business under the name of IDNC Interior Design and Contracts ("IDNC"). This business failed in 2001.

5 On 12 April 2003 (after the respondent became a bankrupt), the respondent's mother, Goh Sia Lue ("Mdm Goh"), who is more than 70 years old, registered JL International Interior Design and Contracts ("JL") naming herself as its sole proprietor. The place of business was stated to be the address of a condominium apartment belonging to the respondent's sister. On 17 November 2005, JL's name was altered to 'JL-IDNC'.

6 Mdm Goh was the sole authorised signatory of cheques for JL's bank account. However, the respondent alone managed JL's bank account: he would prepare all cheques and documents for Mdm Goh to sign. JL's bank statements were also retained by him.

7 The Central Provident Fund Board confirmed that JL was not registered as the respondent's employer.

8 The six charges arose from renovation works carried out by the respondent at three flats. The owners of the three flats were pre-bankruptcy clients – the respondent had previously done renovation works for them when he was operating under IDNC. They had subsequently contacted him again to carry out further renovation works. This was after he had been declared a bankrupt.

Facts relating to the first two charges under section 141(1)(a) of the Act – District Arrest Cases Nos 19274 and 19275 of 2006

9 In February 2004, Ng Hwee Hoon ("Mdm Ng") and her husband, Wong Chee Hon ("Wong"), engaged the respondent to renovate their newly-purchased flat at Geylang Bahru. They had previously engaged the respondent to renovate their old flat sometime in 1998 when the respondent was operating under the firm IDNC. The renovation works were itemised in a quotation dated 20 February 2004 prepared by the respondent. Agreed payment terms included, *inter alia*, a 20% down payment upon confirmation of invoice. At the request of the respondent, Mdm Ng issued a cheque of $6,500 in the respondent's name, being the 20% down payment of the total renovation price. This cheque was deposited by the respondent into his personal bank account.

10 When queried about the change of business names and the residential business address stated

in the quotation, the respondent told Mdm Ng that he had terminated IDNC's business as his partner had withdrawn from it and that JL was his new company's name. He also explained that the address was his sister's residential address.

11 On 9 March 2004, upon receiving a request from the respondent, Mdm Ng drew a cheque of $9,500 in the respondent's name to fund his purchase of tiles and timber for the renovation works. On the same day, the respondent collected the cheque from Mdm Ng and encashed it. Renovation works subsequently started in early May 2004.

12 In August 2004, Wong found out that the respondent was a bankrupt. He was shocked to learn of this. He promptly told his wife about it and the respondent's status as a bankrupt was verified when Mdm Ng carried out an online search. Further, she discovered that JL did not belong to him. Mdm Ng testified that she and her husband would not have engaged the respondent to carry out the renovation works had they known he was an undischarged bankrupt. She stated that she would have been worried that the respondent would run away with her money.

13 On 4 October 2004, Mdm Ng complained to IPTO about the respondent's conduct. In July 2005, IPTO referred the case to the Commercial Affairs Department ("CAD"), and despite her initial reluctance to do so, Mdm Ng was persuaded to lodge a report at CAD to initiate investigations.

Facts relating to the third and fourth charges under section 141(1)(a) of the Act – District Arrest Cases Nos 19276 and 19277 of 2006

14 In early 2005, Selina Lee Miau Kwee ("Selina") engaged the respondent to effect partial renovation works at her parents' house. She and her husband, David Graeme Swadling ("David"), had earlier engaged the respondent to renovate their flat, when he was conducting business through IDNC. However, by 2005, the respondent was operating under JL's name. When asked by Selina about the difference in his firm's name, the respondent told Selina that his partner had decided to dissolve their partnership and he had subsequently set up JL on his own. He added that "JL" were the initials of his name, Jason Low.

15 In March 2005, Selina and David again engaged the respondent to effect further renovations to their flat. On 29 March 2005, Selina signed a confirmation document, dated 26 March 2005, agreeing to the renovation works stated therein. As in the case of Wong and Mdm Ng, the document incorporated payment terms, requiring *inter alia* a 20% down payment upon confirmation of the engagement. Pursuant to this term, Selina handed the respondent a cheque of $14,400 payable to JL, pre-signed by David and dated 30 April 2005. As the cheque was supposed to be dated the same day as the agreement, the respondent approached David to correct the error. Instead of just amending the wrongly dated cheque, David issued another cheque for an amount of $21,600, which was in effect 30% of the total renovation costs. This was the amount required for the second payment under the payment terms – a further 30% payment upon commencement of work. It was then agreed between David and the respondent that the two cheques, that of $21,600 and the post-dated one of $14,400, would be treated as the first and second payments under the agreement. These cheques were deposited into JL's bank account on 30 March 2005 and 3 May 2005 respectively.

16 In early May 2005, the renovation work at Selina's flat commenced. These works were completed by the end of July 2005. However, there were a number of defects that were only satisfactorily rectified in November 2005.

17 The respondent did not inform Selina and David of his bankrupt status.

Facts relating to the fifth and sixth charges under section 141(1)(a) of the Act – District Arrest Cases Nos 19278 and 19279 of 2006

18 In September or October 2005, Wong Kooi Kong ("WKK") and his wife, Kwang Ai Kim ("Kwang"), contacted the respondent for a quotation in respect of renovation works for their newly-purchased flat. They had engaged the respondent to renovate their previous flat in 1997 or 1998 and had been satisfied with the respondent's work.

19 On 12 November 2005, Kwang signed a confirmation document dated 11 November 2005 on the renovation works to be done by the respondent for a total price of $29,000. In accordance with the respondent's usual payment terms, there was a requirement for a 20% down payment upon confirmation of the engagement. A cheque was made out by Kwang for the sum of $5,800 as the down payment. This cheque was banked into JL's bank account.

20 On 24 November 2005, upon the respondent's request, Kwang issued a cash cheque in the sum of $7,860 to facilitate the purchase of materials. This cheque was encashed by the respondent on the same day.

21 Renovation works were commenced at the flat on 11 or 12 December 2005. The renovation works were completed by the end of January 2006. All minor rectification works were completed in February 2006.

22 It should be noted that WKK and his wife were aware that the respondent had been made a bankrupt in 2003. WKK was then working with Prudential Assurance Company Singapore (Pte) Limited ("Prudential Assurance") and acted as his agent in arranging for the respondent's insurance policy. In that year, the Official Assignee sent a letter to Prudential Assurance, which was copied to WKK, informing him that the respondent had been adjudicated a bankrupt. WKK had subsequently informed his wife of the respondent's bankruptcy. However, Kwang and WKK were unaware whether the respondent remained an undischarged bankrupt when he renovated their flat. They did not raise the matter with the respondent, and the respondent in turn did not notify them of his prevailing status as an undischarged bankrupt.

The trial judge's findings

Whether the respondent obtained credit for the purposes of section 141 of the Act

23 Section 141(1)(*a*) of the Act proscribes an undischarged bankrupt from obtaining credit to the extent of $500 or more from any person without informing that person that he is an undischarged bankrupt. The trial judge noted, on the basis of s 141(2)(*b*) of the Act, that obtaining credit included the receipt of advance payments for the supply of goods or services. She determined that the renovation works carried out by the respondent fell within the scope of the supply of services for these purposes. The six payments made (which were the subject matter of the six charges under s 141(1)(*a*) of the Act respectively) were made on account of work to be done and they constituted advance payments for services to be rendered to the respondent's clients. The clients had relied on the respondent to complete the work. The trial judge found that the respondent was directly managing JL and had received credit for the purposes of s 141(1)(*a*) of the Act.

Whether the respondent had disclosed his status as an undischarged bankrupt

24 The trial judge disbelieved the respondent's testimony that he had informed Wong and Mdm Ng of his status as an undischarged bankrupt. She found him an evasive witness who attempted to give

answers that would not implicate himself. In contrast, Wong was found to be a straightforward and candid witness and the trial judge accepted the evidence of Wong and Mdm Ng that the respondent failed to reveal his status to them.

25 The respondent also claimed that he was told by one John Lee, who was investigating Mdm Ng's complaint to the CAD, that he was only required to inform others of his status as a bankrupt when obtaining a loan of $500 and more from them. Thus, he did not inform Selina, David, Kwang and WKK of his status as an undischarged bankrupt, since he was not obtaining any loan from them. The trial judge rejected this claim and found, instead, that the respondent had not asked John Lee if he had to disclose his status in the first place, and even if the respondent did ask, the trial judge preferred John Lee's evidence that if asked, the latter would have elaborated that a loan of $500 included "credit, borrowing, standing as guarantor for any legal documents which encompasses financial implications".

Defence of innocent intention

26 The judge was of the view that on a plain reading of the defence of innocent intention under s 133 of the Act, the respondent was entitled to an acquittal in two alternative scenarios: if he proved *either* he had no intent to defraud *or* he had no intent to conceal the state of his affairs. She explained that the primary meaning of the word "or" was disjunctive and not conjunctive, and she found that to construe the phrases as conjunctive would effectively negate the use of the word "or" employed by the Legislature. If the defences under s 133 of the Act were to be interpreted conjunctively, it would denude the legislative distinction between the phrases "to defraud" and 'to conceal the state of his affairs". The trial judge considered that a conjunctive approach would lead to the phrase, "had no intent to defraud", and the word, "or", being treated as mere tautology or surplusage. This, she pointed out, could not be the case as the phrases were not meaningless; if the respondent could prove a lack of intent to defraud beyond the simple act of concealment, he was entitled to an acquittal.

27 The trial judge found that it was reasonable to conclude that the respondent had not been forthright about his status in order to obviate any reservations that Mdm Ng and Selina might entertain about engaging him if they knew he was a bankrupt. She was therefore not satisfied that the respondent had discharged the onus that he had no intent to conceal his bankrupt status. However, she added that the mere concealment of his status did not inevitably mean that the respondent had an intent to defraud. In her view, to hold otherwise would be to conflate the two defences into one.

28 The trial judge opined that in the context of s 141(1)(*a*) of the Act, pecuniary prejudice was essential in establishing an intent to defraud. She relied, *inter alia*, on the decision of the Court of Appeal in *Tang Yoke Kheng v Lek Benedict* [2005] 3 SLR 263 at [7] where "to defraud", was defined as "an act or omission in which the fraudster deceives the innocent party so as to enrich the fraudster, or cause the innocent party to suffer a loss or detriment". She observed that it was not in dispute that the respondent intended to carry out the renovation works that he contracted. He had obtained advance payments under the contracts to procure the materials and to make payments that were necessary prior to undertaking the works. It was also not in dispute that the respondent completed all the works, and it was never the Prosecution's case that the three couples were defrauded. In the light of this, she concluded that the three couples were not in fact defrauded as the respondent did not seek to enrich himself or to prejudice them. In the circumstances, the trial judge found that the respondent had discharged the onus of proving on a balance of probabilities that he had no intent to defraud, and could rely on the defence of innocent intention acknowledged by s 133 of the Act.

The parties' contentions on appeal

29 The appeal was brought by the Prosecution against the trial judge's construction of s 133 of the Act. It was contended that the trial judge erred in interpreting s 133 of the Act disjunctively, thereby permitting an accused to avoid liability by proving that he had either no intent to defraud or that he had no intent to conceal the state of his affairs. The Prosecution contended that the proper interpretation of the provision required the accused person to *conjunctively* prove that he had no intent either to defraud or to conceal the state of his affairs. If this interpretation were adopted, the respondent would not have succeeded in establishing the defence of innocent intention, as he had been found by the trial judge to have had the intent to conceal his state of affairs; consequently, the respondent ought not to have been acquitted of the six charges under s 141(1)(*a*) of the Act. The respondent, on the other hand, submitted that the trial judge was correct in her construction of s 133 of the Act and its application to the facts. Accordingly, the trial judge's acquittal of the respondent should be upheld. It bears mention that the respondent did not take issue with the trial judge's adverse findings of fact.

Construction of penal provisions

30 Prof Andrew Ashworth in "Interpreting Criminal Statutes: A Crisis of Legality" (1991) 107 LQR 419 identified three key cornerstones critical in the interpretation of criminal statutes (at 427–433): first, the "meaning in context" rule; second, the purposive approach; and third, the principle of restrictive or strict construction. The "meaning in context" rule mandates that the courts give statutory words their ordinary meaning in the context in which they appear. It prescribes that the statutory provision be interpreted in its entirety, without undue focus on an isolated word or phrase. The purposive approach allows the judge the latitude to look beyond the four corners of the statute, should he find it necessary to ascribe a wider or narrower interpretation to its words; the judge's role pursuant to this approach is one of "active co-operation with the policy of the statute": see John Bell and Sir George Engle, *Cross on Statutory Interpretation* (Butterworths, 2nd Ed, 1987) at p 18. These first two principles apply without exception to the interpretation of *all* statutes and constitute settled and established principles of construction. The third approach, namely the strict construction rule, however, pertains specifically to the construction of penal statutes, and has triggered a fair amount of controversy. To that extent, such a rule merits careful examination in the light of the parties' competing contentions.

The strict construction rule

31 Historically, penal statutes have often been strictly construed to lean in the accused's favour. Lord Esher MR's comments in *Tuck & Sons v Priester* (1887) 19 QBD 629 have been customarily quoted in support of such a rule. He stated at 638:

> If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections.

32 The historical origins of the principle of strict construction lie in capital cases, where the construction of an ambiguous law *in favorem vitae* was regarded as a form of fairness to the individual. In the 14th century, benefit of clergy (a defence originally utilised by clergymen who could claim they were outside the jurisdiction of secular courts and seek to be tried instead under canon law, but which, over time, evolved into a mechanism that even secular criminal offenders relied upon for a more lenient sentence, simply by referring to the Bible) was invoked to avoid the death penalty that common law felonies entailed. However, a century later, the burgeoning number of successful

claimants precipitated the passing of legislation to oust the benefit of clergy defence in specified crimes. It was in this context of unmitigated penal severity in serious crimes that the doctrine of strict construction of penal statutes emerged: see Livingston Hall, "Strict or Liberal Construction of Penal Statutes" (1935) 48 Harv L Rev 748 at 749–750. It is apparent, therefore, that the strict construction rule arose in a historical context to address a very definite situation, and for a very definite purpose.

33 As the original mischief that engendered the doctrine of strict construction faded into extinction over time, the rule as expressed by Lord Esher MR came to be regarded as unreasonably absolute by modern academics and judges alike and has provoked severe criticism. Prof J C Smith has remarked in a note on *R v Sibartie* [1983] Crim LR 470 at 472 that the strict construction approach with respect to penal statutes was "out of fashion" (see F A R Bennion, *Statutory Interpretation: A Code* (Butterworths, 4th Ed, 2002) ("*Bennion*") at p 444). Courts have often declined to apply the strict construction rule in its absolute form, and have instead adopted a purposive and broader interpretation of penal statutes, even when such an interpretation proves to be detrimental to an accused (see, for example, *Smith v Hughes* [1960] 1 WLR 830; *Attorney-General's Reference (No 1 of 1988)* [1989] AC 971; *R v Paré* [1987] 2 SCR 618). In fact, the English Law Commission unequivocally declared in its report, *Criminal Law: A Criminal Code for England and Wales* (Law Com No 177, 1989) vol 1 at para 3.17 that the principle of strict construction for penal statutes "cannot sensibly be used as a rule for the resolution of all ambiguities". They concluded:

> We do not think it would be acceptable for the Code to provide in effect that wherever some arguable point of doubt arose about the interpretation of an offence the point should automatically be resolved in favour of the accused.

34 The evolutionary shift from the historical and unduly austere approach to a more contemporary and reasonable one, proffered by the court in *Regina v Aaron Lyons* (1858) Bell C C 38 at 45; 169 ER 1158 at 1161, has been aptly summarised by S G G Edgar, *Craies on Statute Law* (Sweet & Maxwell, 7th Ed, 1971) at p 531 as follows:

> A hundred years ago, … statutes were required to be perfectly precise, and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature.

Indeed, in most common law jurisdictions, the clear distinction between a strict and a liberal construction has almost disappeared in relation to all classes of statutes, in that all statutes, whether penal or not, are construed by substantially the same rules.

35 It bears emphasis, however, that with respect to penal statutes, the rule of strict construction is by no means purely a relic of the past. The doctrine of strict construction, in its qualified and less rigid form, remains an integral part of of the collective principles and policies which the courts draw upon in the construction of penal provisions. However, modern courts have only applied the strict construction rule to ambiguous statutory provisions as a "tool of last resort": *Forward Food Management Pte Ltd v PP* [2002] 2 SLR 40 ("*Forward Food Management*") at [26]. In the English case of *Director of Public Prosecutions v Ottewell* [1970] AC 642, for example, the strict construction rule was affirmed but qualified in a measured tone. Lord Reid stated at 649:

> I would never seek to diminish in any way the importance of [the principle of strict construction] within its proper sphere. *But it only applies where after full inquiry and consideration one is left in real doubt.* [emphasis added]

36 Similarly, in Australia and Canada, the courts have generally taken the same position with respect to the strict construction of penal statutes. In Australia, Gibbs J stated in *Beckwith v R* (1976) 12 ALR 333 at 339:

> The rule formerly accepted, that statutes creating offences are to be strictly construed, has lost much of its importance in modern times. In determining the meaning of a penal statute *the ordinary rules of construction must be applied, but if the language of the statute remains ambiguous or doubtful the ambiguity or doubt may be resolved in favour of the subject* by refusing to extend the category of criminal offences … [emphasis added]

Cory J in the Canadian case of *R v Hasselwander* [1993] 2 SCR 398 ("*Hasselwander*") was also of the view that even with penal statutes, the real intention of the Legislature must be sought, and the meaning of the penal provision arrived at by the courts must be compatible with the goals of the legislation. The strict construction rule only applies where there remains doubt, in the final analysis, as to the meaning of the provision: at 413.

37 Locally, Yong Pung How CJ in *Teng Lang Khin v PP* [1995] 1 SLR 372 endorsed the strict construction rule when he observed (at 378, [16]) that if there was ambiguity in the definition of a term in s 101(2) of the Road Traffic Act (Cap 276, 1985 Rev Ed), "the penal nature of s 101(2) required that the ambiguity be resolved in favour of the appellant". It is abundantly clear, however, that ambiguity must prevail in the provision before recourse can be had to the strict construction rule. The later case of *PP v Tsao Kok Wah* [2001] 1 SLR 666 clarifies this. There, Yong CJ considered, first and foremost, the question of whether or not there was an ambiguity in the provision to be construed. Having decided that the words in that provision were *not* ambiguous, he regarded the rule requiring a strict construction of penal statutes as *irrelevant*: at [22].

38 The modern local position on the construction of penal statutes is appositely summarised by Yong Pung How CJ in *Forward Food Management* (see [35] *supra*) 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.

Section 9A of the Interpretation Act

39 In Singapore, any discussion on the construction of statutes necessarily takes place against the backdrop of s 9A of the Interpretation Act. The provision seeks to highlight the importance of adopting a purposive approach in the course of the courts' interpretation of statutes in order to promote the underlying purpose behind the legislation (see *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at col 517). Section 9A of the Interpretation Act, which was inserted by s 2 of the Interpretation (Amendment) Act 1993 (Act 11 of 1993), provides:

> (1) In the interpretation of a provision of a written law, *an interpretation that would promote the purpose or object underlying the written law* (whether that purpose or object is expressly stated in the written law or not) *shall be preferred to an interpretation that would not promote*

that purpose or object.

(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration *may* be given to that material —

(*a*) to *confirm* that the meaning of the provision is the ordinary meaning conveyed by the text of the provision *taking into account its context in the written law and the purpose or object underlying the written law*; or

(*b*) to *ascertain* the meaning of the provision when —

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision *taking into account its context in the written law and the purpose or object underlying the written law* leads to a result that is manifestly absurd or unreasonable.

…

[emphasis added]

40 The inspiration for s 9A of the Interpretation Act can be ascribed to ss 15AA and 15AB of the Australian Acts Interpretation Act 1901 (Cth) ("the Australian Act") (see Robert C Beckman & Andrew Phang, "Beyond *Pepper* v. *Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute L Rev 69 at 81). The Australian provisions are *in pari materia* with s 9A of the Interpretation Act; to that extent, Australian authorities pronouncing on the effect and application of ss 15AA and 15AB of the Australian Act are helpful in explicating the ambit of s 9A of the Interpretation Act.

41 Section 9A(1) of the Interpretation Act requires the construction of written law to promote the purpose or object underlying the statute. In fact, it *mandates* that a construction promoting legislative purpose be preferred over one that does not promote such purpose or object: see Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 154. Accordingly, any common law principle of interpretation, such as the plain meaning rule and the strict construction rule, must yield to the purposive interpretation approach stipulated by s 9A(1) of the Interpretation Act. *All* written law (penal or otherwise) must be interpreted purposively. Other common law principles come into play *only* when their application coincides with the purpose underlying the written law in question, or alternatively, when ambiguity in that written law persists even after an attempt at purposive interpretation has been properly made.

42 Indeed, the primacy of s 15AA of the Australian Act (and, consequently, of s 9A(1) of the Interpretation Act) is emphatically acknowledged in the leading Australian treatise of D C Pearce and R S Geddes in *Statutory Interpretation in Australia* (Butterworths, 4th Ed, 1996) where the authors state in no uncertain terms at para 2.9, p 33:

> The effect of s 15AA and its equivalents in the states and the Australian Capital Territory is to override both the common law literal approach to interpretation and the purposive approach to interpretation in its common law form …

The interplay between s 15AA of the Australian Act and the literal approach to statutory

interpretation is further elaborated by the same authors at para 2.5, p 27:

> [Section] 15AA requires the purpose or object to be taken into account *even if the meaning of the words, interpreted in the context of the rest of the Act, is clear*. When the purpose or object is brought into account, an alternative interpretation of the words may become apparent. And if one interpretation does not promote the purpose or object of an Act and another interpretation does so, the latter interpretation must be adopted. [emphasis added]

43 The same approach was adopted by the Court of Appeal in *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1 ("*Planmarine*") when it rejected the *wholesale* application of the common law plain meaning rule in the light of s 9A of the Interpretation Act. Whereas the plain meaning rule as laid down by Lord Tindal CJ in *The Sussex Peerage* (1844) 11 Cl & Fin 85; 8 ER 1034 requires one to expound the words of the statute in their natural and ordinary sense where the words are in themselves precise and unambiguous and to refer to the intention underlying the statute *only where doubt arises from the words*, the Court of Appeal in *Planmarine* chose to take the view that the rule in *The Sussex Peerage* must be read subject to s 9A of the Interpretation Act. M Karthigesu JA, in delivering the decision of the court, affirmed (at [22]) that there was no blanket rule that a provision *must* be ambiguous or inconsistent *before* a purposive approach to statutory interpretation may be taken: see extract at [45] below.

44 The tenor of s 9A(2) of the Interpretation Act clearly evinces the parliamentary intention that it is the purposive approach to interpretation which is to be followed: see Beckman & Phang ([40] *supra*) at 82. Section 9A(2) of the Interpretation Act permits consideration to be given to extrinsic material when confirming or ascertaining that the meaning of the statutory provision is the "ordinary meaning conveyed by the text of the provision taking into account its context in the written law *and the purpose or object underlying the written law*" [emphasis added]. Therefore, it is imperative that the purpose or object, as well as the context, of the statutory provision in question, be duly considered when determining its ordinary meaning. In my view this is an unequivocal rejection of the literal rule and/or any other approach suggesting that the purpose or object can be considered only when the ordinary meaning is obscure or ambiguous: see Beckman & Phang at 82–83.

45 It is perhaps appropriate for me to add and emphasise that extrinsic material may be referred to by the courts in statutory interpretation *even where the meaning of the provision in issue is clear on its face*. This was at one time a matter of some controversy, and the High Court in *Re How William Glen* [1994] 3 SLR 474 had in fact held at 479, [16] that where the words of the statute are plain and free from ambiguity the courts cannot rely on the various extrinsic material enumerated in s 9A(2) of the Interpretation Act. That decision was, however, overruled by the Court of Appeal in *Planmarine* ([43] *supra*). It was emphasised at [22]:

> Section 9A(1) of the Interpretation Act sets out a clear direction that in the interpretation of a provision of a written law, the court should take into consideration the purpose of a provision, and to adopt an interpretation which promotes the purpose of a provision as against one that would not. Furthermore, *s 9A(2)(a) of the Interpretation Act expressly allows the court to take into consideration materials such as parliamentary debates to confirm that the meaning of the provision is the ordinary meaning conveyed by the text taking into account the purpose underlying the written law. Following the clear wording of s 9A of the Interpretation Act, there is no blanket rule that a provision must be ambiguous or inconsistent before a purposive approach to statutory interpretation can be taken.* [emphasis added]

46 Australian courts have taken a similar approach in respect of s 15AB(1)(a) of the Australian Act (the equivalent of our s 9A(2)(*a*) of the Interpretation Act). A full Federal Court in *Gardner Smith Pty*

Ltd v Collector of Customs, Victoria (1986) 66 ALR 377 ("*Gardner Smith*") held that even where a provision is not obscure, extrinsic materials may, under s 15AB(1)(a), be used to *confirm* its ordinary meaning. In a similar vein, in *Kioa v West* (1985) 159 CLR 550, reference to extrinsic materials was used to *reinforce* the view that the primary object of the Administrative Decisions (Judicial Review) Act 1977 (Cth) was to achieve procedural reform and not to work a radical substantive change in the grounds on which administrative decisions were susceptible to challenge at common law: see 577. The usefulness of extrinsic material in *confirming* the ordinary meaning of a provision has been extensively reviewed and discussed by Patrick Brazil, the Secretary of the Commonwealth Attorney-General's Department, Canberra, in "Reform of Statutory Interpretation – the Australian Experience of Use of Extrinsic Materials: With a Postscript on Simpler Drafting" (1988) 62 ALJ 503. The learned author observes at 504:

> Extrinsic material can serve a useful role in confirming the ordinary meaning of a provision. It can set the mind, and argument, to rest. The inclusion of the ground also recognised the reality that judges and lawyers in the past had referred, whether openly or not, to extrinsic material for assurance as to the meaning of the text. An incidental aspect is that in particular cases ground (a) [the equivalent of s 9A(2)(*a*) of the Interpretation Act] may enable the court to foreclose criticism that its decision does not reflect the real intention of Parliament.

Therefore, it is apparent that, given the purpose and utility of extrinsic material in ascertaining the meaning of a provision, it is not necessary for there to be ambiguity in the plain meaning of the provision before reference may be had to such material.

47 I acknowledge that in another recent local case, *Volkswagen Financial Services Singapore Ltd v PP* [2006] 2 SLR 539 ("*Volkswagen*"), the High Court appeared to express disapproval over the citing of extrinsic materials, such as parliamentary speeches, where the language of a statutory provision was clear. YongPung How CJ stated at [46]–[47]:

> I was of the view that the provision in question was not ambiguous. *Parliamentary debates are not necessary if the wording of the statute is clear.* As far as I am aware, counsel have been including parliamentary speeches in their written and oral arguments, even though the language of a statutory provision was clear. This has evolved into a worrying trend.
>
> Justice ought to be administered in accordance with the law, more so if the law is clear and precise. The courts have no choice but to adopt the law in its totality. *Citing parliamentary debates would be of little use if the legislation required no further explanation. Such extrinsic materials would then be rendered otiose and would result in a waste of the court's time.*
>
> [emphasis added]

These remarks are *prima facie* inconsistent with other authorities which permit extrinsic materials to be referred to even where a statutory provision is clear and unambiguous. However, it is my view that Yong CJ's remarks in *Volkswagen* must be read in the context of the *relevancy* of certain types of extrinsic materials, and in that light, they are by no means contradictory to the holding of the Court of Appeal in *Planmarine* and the Australian decisions. It is noteworthy that s 9A(2) of the Interpretation Act itself prescribes a test of relevancy before extrinsic material may be relied on. The statutory acid test is that material may be relied on provided it is "capable of assisting in the ascertainment of the meaning of the provision".

48 In short, s 9A of the Interpretation Act does not *oblige* the court to refer to any extrinsic materials placed before it – it is a *permissive* or enabling provision and the court will, and should,

apply its discretion judiciously in utilising such extrinsic materials in statutory interpretation. Counsel, on their part, should limit the extrinsic material they cite in cases of statutory interpretation to those that have the greatest persuasive value, just as they should restrict their citation of authorities to those that are strictly relevant and authoritative: see Low Siew Ling, "Citing Legal Authorities in Court" (2004) 16 SAcLJ 168 at para 41. Indeed, lawyers would do well to bear in mind s 9A(4) of the Interpretation Act, which provides, *inter alia*:

> In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —
>
> …
>
> (*b*) the need to avoid prolonging legal or other proceedings without compensating advantage.

Making use of a literal reading of s 9A(2) of the Interpretation Act to bring in extrinsic material that is only vaguely relevant or hardly authoritative does no more than prolong proceedings and add to the costs of litigation: see Low Siew Ling at para 42.

49 Therefore, against the backdrop of relevancy as an overarching consideration and s 9A(4) of the Interpretation Act, Yong CJ's comments in *Volkswagen* merely point out and emphasise the futility of counsel referring to extrinsic material where such material is irrelevant, unpersuasive, or simply unnecessary for the purposes of statutory interpretation. The indiscriminate citing of such authorities would lead to a needless waste of time and expenses; Yong CJ's caution against such inefficiency does not, in any way, detract from the pronouncements of the Court of Appeal in *Planmarine* that there is no blanket rule barring the reference to extrinsic material where the words of a statutory provision are clear on their face.

50 Having established the supremacy of the statutorily embedded purposive approach in the interpretation of statutes, as well as the permissibility (albeit a limited and qualified one) of referring to extrinsic materials even where the words of a statute are clear, it is pertinent to make two further cautionary observations. First, a purposive approach to interpretation such as that mandated by s 9A(1) of the Interpretation Act (and s 15AA of the Australian Act) should not be construed as being necessarily at odds with a literal reading of a statutory provision – a purposive interpretation simply requires one to approach the literal wording of a statutory provision bearing in mind the overarching and underlying purpose of that provision *as reflected by and in harmony with the express wording of the legislation*.

51 A literal reading of the words expressly used by legislators is in fact likely to coincide with a purposive reading of the words. Bryson J of the New South Wales Supreme Court even went as far as to state in his extra-judicial writing (see Bryson, "Statutory Interpretation: An Australian Judicial Perspective" (1992) 13 Statute L Rev 187 at 189 that:

> The idea that any statute or any other document could ever have been understood without some knowledge of the purposes of its maker would be illusory. It is not possible to read words in a statute without forming some view about the purpose of stating those words, however unconsciously.

Indeed, a piece of legislation successfully drafted is one which clearly brings out the purpose underlying the provision by its express literal words. This was the view taken in *Statutory*

Interpretation in Australia ([42] *supra*) where the authors state at para 2.5, p 31:

> Generally speaking, it is only when the drafter has fallen short of his or her ideal that the dominance of the purposive approach as dictated by [s 15AA of the Australian Act and its counterparts] assumes significance. *If the drafter has achieved what he or she set out to do, applications of the literal and the purposive approaches will produce the same result.* [emphasis added]

52 More importantly, 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. This much is clear from the decision of Dawson J of the High Court of Australia in *Mills v Meeking* (1990) 91 ALR 16. In that case, Dawson J explained the effect of s 35(a) of the Interpretation of Legislation Act 1984 of Victoria (which is based on s 15AA of the Australian Act and corresponds to s 9A(1) of the Interpretation Act). He stated at pp 30–31:

> The approach required by s 35 needs no ambiguity or inconsistency; it allows a court to consider the purposes of an Act in determining whether there is more than one possible construction. Reference to the purposes may reveal that the draftsman has inadvertently overlooked something which he would have dealt with had his attention been drawn to it and if it is possible as a matter of construction to repair the defect, then this must be done. However, if the literal meaning of a provision is to be modified by reference to the purposes of the Act, the modification must be precisely identifiable as that which is necessary to effectuate those purposes *and it must be consistent with the wording otherwise adopted by the draftsman. Section 35 requires a court to construe an Act, not to rewrite it, in the light of its purposes*. [emphasis added]

Courts must be cautious to observe the limitations on their power and to confine themselves to administering the law. "Purposive construction often requires a sophisticated analysis to determine the legislative purpose and a discriminating judgment as to where the boundary of construction ends and legislation begins" (*per* McHugh JA in *Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 423). Section 9A of the Interpretation Act should not be viewed as a means or licence by which judges adopt new roles as legislators; the separation of powers between the judicial branch and the legislative branch of government must be respected and preserved.

53 The second cautionary note is that one must be constantly mindful of the parameters restricting the actual use of extrinsic material in construing the ordinary meaning of a statutory provision. Mason CJ, Wilson and Dawson JJ clearly defined these parameters in *Re Bolton; Ex parte Beane* (1987) 162 CLR 514 at 518:

> *The words of a Minister must not be substituted for the text of the law.* Particularly is this so when the intention stated by the Minister but unexpressed in the law is restrictive of the liberty of the individual. It is always possible that through oversight or inadvertence the clear intention of the Parliament fails to be translated into the text of the law. However unfortunate it may be when that happens, the task of the Court remains clear. *The function of the Court is to give effect to the will of Parliament as expressed in the law.* [emphasis added]

Apart from ministerial statements, this passage should apply with equal force to all other extrinsic material. Any material outside the enacted text is of "essentially auxiliary nature". Resort to the Minister's words, or to any other extrinsic material, can resolve ambiguity or doubt when the text reveals them or is used to confirm the meaning of the provision as brought out by a purposive reading of the text; *the subject matter under consideration remains the text as enacted*: see Bryson ([51] *supra*) at 204.

54 Further, the Australian courts have held that extrinsic materials can be utilised to *confirm* the ordinary meaning of a particular provision where that provision is clear on its face, but they cannot be used to *alter* its meaning: see for example, *Commissioner of Australian Federal Police v Curran* (1984) 55 ALR 697 at 706–707; and *Gardner Smith* ([46] *supra*) at 383–384. This lends support to the principle that where the ordinary meaning of a statutory provision, taking into account its context and the purpose or object underlying it, is clear and unambiguous, the content of any extrinsic material should not, and cannot, be substituted in place of the actual text of the statute.

55 Finally, it is noteworthy that s 9A(1) of the Interpretation Act does not draw any distinction between penal and civil provisions. The definition of "written law" under s 2 of the Interpretation Act similarly makes no such distinction, stating merely that:

> "written law" means the Constitution and all previous Constitutions having application to Singapore and *all Acts, Ordinances and enactments* by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore; [emphasis added]

Section 9A(1) of the Interpretation Act should therefore apply universally to all manner of written law.

56 That statutorily stipulated principles of interpretation take precedence over the common law rule of strict construction in penal statutes has also been acknowledged by the Supreme Court of Canada in *Hasselwander* ([36] *supra*). Cory J stated at 413:

> [T]he rule of strict construction becomes applicable *only* when attempts at the neutral interpretation suggested by s 12 of the *Interpretation Act* still leave reasonable doubt as to the meaning or scope of the text of the statute. [emphasis added]

I agree with the Canadian position that the common law rule of strict construction should play second fiddle to principles of interpretation prescribed by statute. By virtue of its mandatory nature, s 9A(1) of the Interpretation Act must surely take precedence over the rule of strict construction, in the same way that it prevails over any other common law principles of interpretation. Hence, the operation of the strict construction rule must necessarily be limited to situations where ambiguity persists despite all attempts to interpret a penal provision in accordance with s 9A(1) of the Interpretation Act.

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, even 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.

Section 133 of the Act

58 Having discussed the position on the interpretation of statutes, it is now appropriate to examine the particular penal provision to be interpreted in the present case. Section 133 of the Act defines the defence of innocent intention in the following terms:

> In the case of an offence under any provision of this Part, other than sections 135(*e*), 137, 140(2), 142, 143 and 145, a person shall not be guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had *no intent to defraud or to conceal the state of his affairs*. [emphasis added]

59 This appeal turned purely on the interpretation of this section, and in particular, the phrase "no intent to defraud *or* to conceal the state of his affairs" [emphasis added]. The issue is whether s 133 of the Act requires an accused person to prove *both* that he had no intent to defraud *and* that he had no intent to conceal the state of his affairs to succeed in establishing the defence of innocent intention; or whether it is sufficient simply to prove *either* that he had no intent to defraud *or* that he had no intent to conceal the state of his affairs.

Legislative history of section 133 of the Act

60 Section 133 of the Act in its present incarnation was only introduced when the 1985 revised edition of the Bankruptcy Act was overhauled in 1995. The position under the previous edition of the Act was that each bankruptcy offence (contained in s 111 of the Bankruptcy Act (Cap 20, 1985 Rev Ed)) was self-contained, addressing both the circumstances constituting the offence, as well as any applicable defences. For instance, s 111(1)(*a*) read:

> Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made under this Act shall in each of the cases following be punished with imprisonment which may extend to 2 years or with fine or with both:
>
> > (*a*) if he does not to the best of his knowledge and belief fully and truly discover to the Official Assignee all his property, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade, if any, or laid out in the ordinary expenses of his family, *unless he satisfies the court that he had no intent to defraud*[.]
>
> [emphasis added]

61 Most of the other subsections in s 111 acknowledged similar defences: it was a defence to the offences contained in sub-ss (*a*), (*b*), (*c*), (*d*), (*f*), (*o*) and (*p*) if the bankrupt "had no intent to defraud" ("the defraud defence"); and for the offences in sub-ss (*h*), (*i*) and (*j*), the bankrupt could avail himself of a defence if he "had no intent to conceal the state of his affairs or to defeat the law" ("the conceal defence"). It should be noted that *none* of the subsections permitted an accused bankrupt to rely on *both* the defraud and the conceal defences in the alternative. Further, there were offences which *neither* defence applied – significantly, s 111(1)(*m*)(i), the predecessor to the present s 141of the Act, contained such an offence and no defences were recognised by that subsection. It simply read:

> if, being an undischarged bankrupt –
>
> > (i) either alone or jointly with any other person he obtains credit to the extent of $100 or

upwards from any person without informing that person that he is an undischarged bankrupt; …

62 In contrast, s 133 of the Act applies, *inter alia*, to s 141(1)(*a*) of the Act and allows, unlike its progenitors, a defence to the offence of an undischarged bankrupt obtaining credit without disclosing his status as a bankrupt. It purports to combine within its ambit both the defraud defence and the conceal defence into a *single* defence – that of *innocent intention*. Indeed, the marginal note and caption to s 133 of the Act refers to the "[d]efence of innocent intention". The defence of innocent intention in s 133 of the Act was derived from and is materially identical to s 352 of the English Insolvency Act 1986 (c 45) ("the English s 352"), which reads:

> Where in the case of an offence under any provision of this Chapter it is stated that this section applies, a person is not guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

63 It seems to me, the fact that both the lack of intent to defraud and the lack of intent to conceal the state of a bankrupt's affairs have been combined within s 133 of the Act and the English s 352 also gives rise to a *prima facie* inference of a *single* defence of innocent intention consisting of two limbs. Such an inference is supported by the commentary on the English s 352 in L S Sealy & David Milman, *Annotated Guide to the 1986 Insolvency Legislation* (CCH Editions Limited, 2nd Ed, 1988). The authors note, at p 380, with respect to the English s 352:

> If the bankrupt is charged with certain [offences] in ss 353–362, he has *a defence* if he can prove that he had not intended to defraud or conceal his affairs. [emphasis added]

I find it noteworthy that the authors of the annotation have specifically referred to the composite defence of innocent intention *in the singular* by the use of the phrase "a defence".

Nature of section 133 of the Act

64 The defence of innocent intention in s 133 of the Act is essentially a statutory reversal of burden of proof: it seeks to transfer the burden of proving the *mens rea* of the offence from the Prosecution to one of negating the requisite mental element onto the Defence. The reversal of burden by the English s 352 was discussed in Christopher Berry, Edward Bailey & Stephen Schaw Miller, *Personal Insolvency: Law and Practice* (Butterworths, 3rd Ed, 2001). The authors state at para 19.4:

> The conventional construction of this provision is that it imposes on the accused the legal or persuasive burden of proving that he did not have the intention mentioned. That is to say that the accused must prove, albeit on the balance of probabilities, that he did not have the relevant intention.

65 In the local context, all the bankruptcy offences in Pt X of the Act have been drafted in a manner that immediately attaches liability on the bankrupt once the *actus reus* and certain stipulated circumstances are established. For example, s 138(1)(*a*) of the Act states:

> A bankrupt shall be guilty of an offence if —
>
> > (*a*) he makes or causes to be made, or has during the period of 5 years prior to the date of the bankruptcy order against him made or caused to be made, any gift or transfer of, or any charge on, his property; …

Therefore, so long as the disposal of the property by the bankrupt has been established by the Prosecution, the bankrupt is guilty of an offence pursuant to s 138(1)(*a*) of the Act *unless* he is able to avail himself of the defence of innocent intention conferred by s 133 of the Act. As such, it is up to the Defence to *disprove* the *mens rea* on a balance of probabilities – specifically, that the accused did not intend to defraud or to conceal the state of his affairs.

66 In the present case, s 141(1)(*a*) of the Act similarly stipulates for the strict liability of a bankrupt who has obtained credit without informing that creditor that he is an undischarged bankrupt as follows:

> A bankrupt shall be guilty of an offence if, being an undischarged bankrupt —
>
> > (*a*) either alone or jointly with any other person, he obtains credit to the extent of $500 or more from any person without informing that person that he is an undischarged bankrupt; …

As long as it can be established that the bankrupt did indeed obtain such credit and had in fact failed to disclose his status as an undischarged bankrupt, he would be guilty of an offence pursuant to s 141(1)(*a*) of the Act. Once the Prosecution has successfully proved the *actus reus* of the offence, it is then for the Defence to show that the bankrupt did not possess the requisite *mens rea* for the offence – the intent to defraud or to conceal the state of his affairs.

Interpretation of section 133 of the Act

67 Having considered the background and nature of s 133 of the Act, I turn now to the construction of the provision proper. Two specific and distinct states of mind are mentioned in s 133 of the Act: first, the lack of intent to defraud; and second, the lack of intent on the part of the bankrupt to conceal the state of his affairs. The question then is whether the phrase "no intent to defraud *or* to conceal the state of his affairs" [emphasis added] in s 133 of the Act requires proof of *both* states of mind, or whether the defence will succeed so long as *either* of the states of mind provided for is established.

68 The trial judge was of the view that the primary meaning of the word "or" is disjunctive rather than conjunctive. She felt that to construe the phrases as conjunctive would effectively negate the use of the word "or" that had been employed by Parliament: see [26] above. She determined that the accused was entitled to an acquittal in *two* different scenarios: namely, if he proves that he had no intent to defraud, *or* if he proves that he had no intent to conceal the state of his affairs. In her opinion, s 133 of the Act recognised *two distinct defences*, either of which would afford the accused person a complete acquittal.

69 It is a settled principle of statutory interpretation that not *every* application of the word "or" produces a disjunctive result. In fact, case law suggests that the word "or" may connect words that are more than simply alternatives of each other. For example, in the old English case of *Rickerby v Nicholson* [1912] 1 IR 343, Ross J stated at 348:

> The word "or" [contained in a will] does not necessarily imply that an alternative is given to the legatee. … *It is often used by the best English authors, not to connect real alternatives, but merely to connect different words expressing the same or a cognate idea* … [emphasis added]

The Canadian case of *Rex v Clarke and Tomkins* [1948] 1 WWR 75 also interpreted the word "or" by reference to its use in a provision of the Canadian Criminal Code, which provided that everyone is guilty of an offence who "has in his custody or possession, or carries any offensive weapon".

O'Halloran JA concluded at 76 as follows:

> A separate offence is not created by the mere use of the disjunctive "or," which is employed frequently to convey a descriptive meaning, to amplify, to escape from verbal rigidity, and sometimes to explain a situation or *combination of circumstances* more flexibly and comprehensively through the use of words as if they were pictures or symbols. Some things may be more easily described than defined. [emphasis added]

70 In the present case, Parliament's use of the word "or" in the phrase "no intent to defraud or to conceal the state of his affairs" in s 133 of the Act may therefore be read to require an exclusion of the two states of mind, rather than simply denoting *alternate* states of mind.

71 A contextual non-disjunctive reading of the word "or" was also adopted by the Court of Appeal in *Kuah Kok Kim v Ernst & Young* [1997] 1 SLR 169, in construing of O 24 r 7A of the Rules of the Supreme Court (Cap 322, R 5, 1990 Ed). The court was satisfied that the word "or" between paras (a) and (b) of that particular rule should be construed to mean "and"; the two paragraphs must be construed conjunctively and not disjunctively. Therefore, it was held that an affidavit in support of an application under O 24 r 7A(1) of the Rules of the Supreme Court must satisfy *both* paragraphs, instead of simply any *one* of the paragraphs. Likewise, in *Lam Joon Shu v AG* [1993] 3 SLR 649, M Karthigesu JA commented at 654, [20] that there was no rule of construction preventing the conjunctive reading of the word "or"; however, he added that clear adequacy of context was necessary.

72 In construing the word "or" in a statutory provision, as in the present case, I am of the view that the requisite adequacy of context necessitating a conjunctive reading of the word arises from parliamentary intent. P St J Langan, *Maxwell on the Interpretation of Statutes* (N M Tripathi Private Ltd, 12th Ed, 1969) ("*Maxwell*") sagely observes at p 232–233:

> In ordinary usage, "and" is conjunctive and "or" is disjunctive. But to carry out the *intention of the legislature*, it may be necessary to read "and" in place of the conjunction "or", and vice versa. [emphasis added]

Locally, it is also pertinent to note s 9A(1) of the Interpretation Act, which specifically mandates a purposive interpretation of legislation in accordance with the object underlying the legislation, in other words, the intention of Parliament. Therefore, it is important to examine the legislative intent underpinning the defence of innocent intention in s 133 of the Act and the corresponding offences to which it applies. For the purposes of the present case, the defence will be considered primarily with respect to the offence committed under s 141(1)(*a*) of the Act.

Legislative intent behind section 141(1)(a) of the Act and the operation of the section 133 defence in relation to it

73 The *raison d'être* behind s 141(1)(*a*) of the Act is to safeguard innocent creditors from lending money to undischarged bankrupts without any knowledge of the risk arising from the bankrupt's status. This was highlighted by Yong Pung How CJ in *PP v Ong Ker Seng* [2001] 4 SLR 180 ("*Ong Ker Seng*") at [31]:

> The rationale behind the s 141(1)(a) Bankruptcy Act offence is that a person who has a track record of losing money extended by way of credit from other people has demonstrated his inability to manage his financial affairs. After being made insolvent, the bankrupt should not be left at liberty to freely obtain further credit and potentially lose more of an innocent lender's

> money. *One of the aims of creating the offence in s 141(1)(*a*) of the Act is to ensure that undischarged bankrupts inform proposed lenders of their status before credit is extended to them*. [emphasis added]

Yong CJ then went on to discuss the impropriety that s 141(1)(*a*) of the Act was meant to address, citing the Cork Committee in the UK at [32]:

> Logically, in our view, the wrong consists, not in the failure to pay the debt (which is a civil wrong), but in the deception practised on the creditor by obtaining credit from him knowing that he would not extend it if he knew the circumstances. *Even where the bill is paid at once, the creditor was still put unjustifiably at risk*. [emphasis added]

74 That the offence of a bankrupt obtaining credit without the disclosure of his bankrupt status has been devised purely for the protection of his creditors has also been stated in no uncertain terms in England from as early as the 1920s. In *The King v Edward Fitzgerald, Duke of Leinster* [1923] 1 KB 311, Lord Hewart CJ discussed s 155(a) of the English Bankruptcy Act 1914 (c 59), which provided for an offence similar to s 141(1)(*a*) of the Act. He opined at 316:

> *The object of the sub-section is to protect the person from whom the bankrupt seeks to obtain the credit.* That person is not protected unless disclosure is actually made to him of the fact that the person obtaining the credit is an undischarged bankrupt … The disclosure must be made in fact to the person giving the credit, and if the credit be obtained without disclosure having in fact been made to that person, then, *whatever may have been the state of mind of the undischarged bankrupt*, the offence is committed. [emphasis added]

75 It is crystal clear that s 141(1)(*a*) of the Act is not meant to address any attempt on the part of a bankrupt to defraud his creditor. Rather, the marrow of the offence in s 141(1)(*a*) of the Act lies in the fact that the creditor's money is put at risk without an adequate opportunity to appraise the credit peril or the recovery prospects, thereby disabling the creditor from making an informed decision. This rationale behind s 141(1)(*a*) of the Act is further supported by the approach of the courts toward repayments of the credit extended for the purposes of that provision. In *Ong Ker Seng* ([73] *supra*), Yong CJ asserted at [33]:

> It follows that repayment of the loan by the bankrupt in these cases should not be regarded to be as strong a mitigating factor as restitution in deprivation of property cases.

In the UK, the court in *Regina v Hartley* [1972] 2 QB 1 took a similar stance, and it was clearly stated (at 7) that such repayments could not constitute a defence to the offence under the UK equivalent of s 141(1)(*a*) of the Act:

> [A]ny subsequent payments reducing the indebtedness may go to mitigation but cannot provide a defence.

76 Extrapolating from the definition of "to defraud" adopted by the trial judge, namely, the commission of an act or an omission in which the fraudster deceives the innocent party so as to enrich the fraudster or which causes the innocent party to suffer a loss or detriment (see [28] above), an intent to defraud would include an intent *not* to repay the loan received from the creditor; or on the extended definition of "obtaining credit" provided for by s 141(2)(*b*) of the Act, an intent *not* to perform one's end of the bargain after having induced the extension of credit. On this premise, the duly repaid debt or the fulfilment of one's promise should indicate the *lack* of an intent to defraud and therefore afford a complete defence to the offence under s 141(1)(*a*) of the Act. Indeed, this

was precisely what the trial judge held, thereby acquitting the respondent on that basis. This cannot be right and flies in the face of the statutory policy underpinning the subject provision.

77 It is plain that Parliament did not envisage that the mere repayment of the credit extended or the fulfilment of the bankrupt's bargain in exchange for the extension of credit should afford the accused bankrupt a defence to s 141(1)(*a*) of the Act. It is hornbook law that such repayment is also *not* viewed as a strong mitigating factor. This interpretation of s 141(1)(*a*) of the Act requires something over and above an intent to repay (and, correspondingly, a lack of intent to defraud) for the bankrupt to be exonerated from the *actus* of the offence. In my view, a lack of any intent on the part of the bankrupt to conceal his state of affairs is required for the bankrupt to successfully mount a defence if indeed s 141(1)(*a*) of the Act is *prima facie* to be satisfied.

78 Accordingly, I find that a disjunctive interpretation of s 133 of the Act allowing for a *single* lack of intent to defraud *or* a *single* lack of intent to conceal the state of a bankrupt's affairs to constitute a defence to s 141(1)(*a*) of the Act would drive a coach and fours through the underlying rationale of the provision. Such an interpretation would allow bankrupts to freely obtain credit whilst intentionally concealing their status as undischarged bankrupts and thereby subject their creditors to unforeseen risks, so long as they honestly believe that they can repay the loans, and had the intention to do so. This would certainly perpetrate the very mischief sought to be addressed by s 141(1)(*a*) of the Act.

79 Instead, the correct interpretation of s 133 of the Act which plainly dovetails with the parliamentary intent is that the defence of innocent intention is a *single defence* that bankrupts accused of offences such as s 141(1)(*a*) of the Act may avail themselves of. This defence will succeed *only* on proof of *both* the limbs contained in s 133 of the Act. In other words, the bankrupt has to prove that he has *neither* any intent to defraud *nor* any intent to conceal the state of his affairs before the defence of innocent intention can be made out.

The operation of section 133 of the Act generally

80 Section 133 of the Act is a general defence that applies generally to the bankruptcy offences contained in Pt X of the Act, with specified exceptions (ss 135(*e*), 137, 140(2), 142, 143 and 145 of the Act). It is important, therefore, for the interpretation of s 133 of the Act to be congruent not only with s 141(1)(*a*) of the Act, which is the offence in question, but also to the wider spectrum of bankruptcy offences that it embraces. I am satisfied that interpreting s 133 of the Act as constituting a single defence of innocent intention consisting of two limbs of prescribed intent, both of which must be absent, is equally appropriate in relation to the other relevant bankruptcy offences.

81 A careful consideration of s 138(1)(*a*) of the Act (see [65] above) illustrates and reinforces my view as to why s 133 of the Act should be interpreted as a single defence rather than as allowing two disjunctive defences. Section 138(1)(*a*) of the Act makes it an offence for a bankrupt to dispose of his property both after bankruptcy and up to five years prior to bankruptcy. On a disjunctive reading of s 133 of the Act, so long as the bankrupt can prove that he has disposed of his property openly, without any intention to conceal the state of his affairs, then he would have proved one of the alternative defences afforded by s 133 of the Act, and despite possibly having an intent to defraud through the property disposal, he should nevertheless be acquitted of the offence. Again, this cannot be the intention of Parliament in enacting s 133 of the Act. The mere proof of a lack of intent to conceal the state of a bankrupt's affairs should not, without more, afford the bankrupt a complete defence. In fact, with respect to s 138 of the Act in particular, its marginal note states the mischief Parliament had intended it to target: "Fraudulent disposal of property". That in itself suggests that the lack of intent to defraud must necessarily be established before a bankrupt can avoid the embrace of s 138 of the Act. Yet, Parliament has nevertheless allowed a bankrupt contravening

s 138(1)(*a*) of the Act to avail himself of the defence of innocent intention pursuant to s 133 of the Act. It may be safely concluded that Parliament could *not* have intended that the two limbs in s 133 of the Act – the lack of intent to defraud and the lack of intent to conceal the state of a bankrupt's affairs – should operate disjunctively, *either* of which could afford a complete defence to a bankrupt accused. Instead, the only reasonable inference is that Parliament must instead have intended for *both* the limbs of s 133 of the Act to be satisfied before the *single* defence of innocent intention is made out. The Act will, otherwise, become a bankrupt's charter for fraudulent behaviour.

82 Further, the general thrust of legislative intent behind the bankruptcy offences introduced in the Bankruptcy Act (Cap 20, 1995 Rev Ed) ("BA") is plainly to ensure that bankrupts who are in breach of these penal provisions are subject to a more rigorous punitive regime. Such an intent is evinced by the statements of the Minister for Law, Prof S Jayakumar, in the Second Reading of the Bankruptcy Bill (see *Singapore Parliamentary Debates, Official Report* (25 August 1994) vol 63 at cols 402–403):

> *The third feature is to enhance the Official Assignee's powers to enforce the bankrupt's essential legal obligations. Bankrupts who fail to perform their essential legal obligations will be taken to court*. Currently, a bankrupt who fails to fulfil his legal obligations, such as, filing a six-monthly return of income and expenditure, or leaving the country without the Official Assignee's permission, is only liable to committal proceedings for contempt of court. This is a costly and circuitous process which also impedes the administration of the estate. The Bill will subject recalcitrant bankrupts to prosecution. Also, the Official Assignee will be empowered, if he thinks fit, to detain the passport, or other travel document of a bankrupt, or to request the Controller of Immigration to do so when a bankrupt attempts to leave the country without the Official Assignee's prior approval. [emphasis added]

In addition, the maximum punishment provided for essentially the same offences have been raised from an earlier maximum punishment of imprisonment of up to two years or a fine, or both (under s 111(1) of the Bankruptcy Act (Cap 20, 1985 Rev Ed)), to imprisonment for a term not exceeding three years or a fine of $10,000, or both (under s 146 of the BA).

83 It therefore seems highly implausible that Parliament intended to effect through a side-wind a more lenient regime for offending bankrupts apropos similar offences under the BA. Section 133 of the Act has to be read as affording a defence *only* where the bankrupt is able to prove both the limb requiring a lack of intent to defraud, as well as the limb requiring a lack of intent to conceal the state of his affairs. A disjunctive reading of s 133 of the Act would, on the other hand, facilitate the acquittal of far more bankruptcy offenders than Parliament could have ever intended – especially considering that the predecessors to some of the bankruptcy offences (including s 141(1)(*a*) of the Act) imposed strict liability, and the predecessors to the other offences to which s 133 of the Act applies provided only the defraud defence *or* the conceal defence, but never both. An interpretation of s 133 of the Act allowing the bankrupt a *choice* of relying on the defraud defence or the conceal defence, *either* of which would afford an acquittal, would certainly militate against the more rigorous punitive regime that Parliament envisaged when enacting the BA.

84 At this point, it is also pertinent to advert to another pertinent and persuasive observation made in *Maxwell* ([72] *supra*) at p 234:

> The fact that an enactment is penal does not, it appears from *R.* v. *Oakes*, necessarily prevent the statute from reading one conjunction in place of another *even though this produces a result which is unfavourable to an accused person*. [emphasis added]

This observation is made on the authority of the English case of *Regina v Oakes* [1959] 2 QB 350. The court in that case decided that the conjunction "and" should be read as "or" despite the fact that such a construction of the statutory provision in question produced a result less favourable to the accused. It stated at 356–357:

> The court feels … that on principle there is no reason, if compelled to that end, why the words should not be changed even though the result is less favourable to the subject …

85 The above observations are in tandem with the proposition that the strict construction rule mandating penal statutes to be construed in favour of the accused is a *qualified* and *non-absolute* principle of interpretation that applies *only* where ambiguity persists after a purposive interpretation approach pursuant to s 9A(1) of the Interpretation Act is adopted: see [33]–[38] above. Therefore, notwithstanding that the interpretation of s 133 of the Act as affording a *single* double-limbed defence would result in a stricter regime of bankruptcy offences, this *per se* cannot detract from adopting such an interpretation. The manifest intention of the Legislature as disclosed from the context of the relevant statutory provision must take precedence (see Guru Prasanna Singh, *Principles of Statutory Interpretation* (Wadhwa and Company, 7th Ed, 1999) at pp 339–340).

English authorities

86 I turn now to briefly consider the English authorities that both the Prosecution and the respondent rely on in purported support of their respective interpretations of s 133 of the Act.

87 It appears that there are no reported decisions directly on point in the interpretation of the English s 352 (see [62] above). However, both parties have cited, *inter alia*, a decision of the English Court of Appeal in order to flesh out the defence of innocent intention. This is the case of *R v Daniel* [2002] EWCA Crim 959 ("*Daniel*"). The Prosecution referred to Auld LJ's judgment where he stated at [31] as follows:

> Thus, where a bankrupt, knowing what is required of him, conceals a debt, how should the burden imposed on him of explaining his concealment be regarded? If he inadvertently "concealed" the debt he will not be guilty of an offence under s 354, regardless of the defence provided by s 352, because of lack of intent. *Why should it be unreasonable to require a person, who has deliberately concealed a debt in circumstances where he knows he was obliged to disclose it, prove that he did not intend to defraud or to conceal the state of his affairs.* [emphasis added]

88 The above cited passage, albeit non-conclusive *per se*, does appear to support the contention that the lack of intent to defraud or to conceal the state of a bankrupt's affairs constitutes a *single* defence to be established by the bankrupt accused. It appears that the words "prove that he did not intend to defraud or to conceal the state of his affair" mean that a bankrupt accused is required to prove *both* limbs in order to succeed in establishing the defence in the English s 352.

89 The respondent, on the other hand, referred, *inter alia*, to [16] of Auld LJ's judgment:

> A bankrupt might deliberately and deceptively conceal property from the Official Receiver without necessarily intending to defraud or to conceal the state of his affairs, for example, because he might have in mind dealing honestly and in some other and open way with his creditors. If he wishes to advance such an explanation, s 352 gives him the opportunity of avoiding a conviction that would otherwise follow from the prosecution's proof of the elements making up s 354.

It was argued that this passage indicated that the English Court of Appeal had construed the defence

of "no intent to defraud" as being a separate ground of defence from "no intent to conceal".

90 I am unable to accept such an argument. In fact, the example that Auld LJ gave which could allow a bankrupt to avail himself of the English s 352 – "he might have in mind dealing *honestly and* in some other and *open* way with his creditors" [emphasis added] – seems to suggest that *both* honesty and openness are necessary constituents of the defence of innocent intention in the English s 352. As such, the lack of intent to defraud *and* the lack of intent to conceal the state of a bankrupt's affairs should, instead, be interpreted as two limbs of a single defence, both of which must be satisfied before the defence can succeed.

91 The English authorities do not offer compelling assistance in the construction of s 133 of the Act. In particular, the respondent's reliance on the English case of *Daniel* did not assist in persuading me that the lack of intent to defraud and the lack of intent to conceal a bankrupt's state of affairs are mutually disjunctive, alternative defences, and that proof of either may afford the bankrupt a complete defence. Instead, I find, on the contrary, that the English Court of Appeal's decision in *Daniel* hints at an interpretation that is at odds to that articulated by the respondent: that is to say, s 133 of the Act (and the English s 352) consists of a *single* defence requiring proof of *both* a lack of intent to defraud *and* a lack of intent to conceal the state of a bankrupt's affairs.

Summary

92 The trial judge erred in construing s 133 of the Act as permitting alternative defences premised on the lack of intent to defraud and the lack of intent to conceal the state of a bankrupt's affairs respectively. There is only one defence of innocent intention, and for that defence to succeed, the bankrupt accused has to prove that he has *neither* an intent to defraud *nor* an intent to conceal the state of his affairs.

The present appeal

93 Having found that s 133 of the Act should be construed as a single defence of innocent intention, it now remains for me to apply that interpretation to the facts of the present case.

94 Both the Prosecution and the respondent have not challenged the trial judge's findings of fact. I am satisfied, therefore, that these findings should stand.

95 The respondent has been held to have obtained credit without disclosing his undischarged bankrupt status, and has therefore contravened s 141(1)(*a*) of the Act. In addition, the trial judge has found an intent on the part of the respondent to conceal the state of his affairs from his renovation customers, from whom he had "obtained credit". However, the trial judge was of the view that the respondent did not intend to defraud these customers, as he had every intention to complete the renovation works as promised, and had indeed done so.

96 On these findings, the respondent has only proved *one* limb of the s 133 of the Act defence of innocent intention – that he did not have an intent to defraud. The absence of any intent to conceal the state of his affairs had not been established. As s 133 requires the bankrupt accused to prove *cumulatively* the lack of intent to defraud and the lack of intent to conceal the state of his affairs in order to successfully establish the defence of innocent intention, the respondent cannot rely on s 133 and cannot avail himself of any defence to prevent his conviction under s 141(1)(*a*) of the Act.

97 The Prosecution's appeal against acquittal was therefore allowed. I accordingly convicted the respondent of all six charges under s 141(1)(*a*) of the Act.

The sentence

98 Counsel for the respondent submitted in mitigation that the respondent was a father of two daughters and the sole breadwinner of the family. The circumstances of the case were such that the respondent did not have any dishonest intention in obtaining advance payments for his renovation works – he had not pocketed the money, and had instead delivered what he promised. Further, in each of the instances for which the respondent had been charged, he had not gone looking for business. Rather, these customers had approached him as he had done work for them before.

99 The Prosecution referred the court to *Ong Ker Seng* ([73] *supra*) and highlighted the principles on sentencing for s 141(1)(*a*) offences contained therein: namely, that imprisonment would be a more appropriate punishment than a fine; and that the repayment of the credit extended should not constitute a strong mitigating factor. Apart from that, the Prosecution had not made any submission on sentence.

100 All said and done, this is to some extent an unusual case that may be distinguished from previous cases concerning s 141(1)(*a*) offences. Previous cases such as *Ong Ker Seng* and *PP v R Sekhar s/o R G Van* [2003] 2 SLR 456 invariably involved some dishonesty and intent to defraud; in contradistinction, the present case is one of pure concealment. I also note that the respondent had already served the six weeks' imprisonment term imposed by the trial judge on convicting him of the offence under s 26(1) of the Business Registration Act that he was concurrently charged with. The sentences imposed in the earlier cases mentioned above (three months' imprisonment and 12 months' imprisonment for each s 141(1)(*a*) charge in each case respectively) do not, therefore, serve as appropriate benchmarks for the imposition of a sentence in the present case.

101 I note, however, the operation of s 18 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) in the present case. The provision states:

> Where at one trial a person is convicted and sentenced to imprisonment for at least 3 distinct offences, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.

Since the respondent is convicted of six charges under s 141(1)(*a*) of the Act, the sentences for at least two of these charges must run consecutively.

102 In the light of the above principles and considerations, I am of the view that an appropriate sentence in this case is one week's imprisonment for each s 141(1)(*a*) charge. Two of these sentences are to run consecutively. Two factors weighed heavily on my mind in deciding on this sentence: first, the fact that no loss was ultimately caused by the respondent; and second, that the respondent had already served a sentence of six weeks' imprisonment. I must caution, however, that this sentence is not to be regarded as the norm for contravening s 141(1)(*a*) of the Act.

Conclusion

103 I summarise and reiterate that in interpreting a statutory provision, the legislative intent underlying both that particular provision as well as the architecture of the Act often takes precedence over the arid literal meaning and ordinary usage of the words used by draftsmen as well as over any common law principles of interpretation: see s 9A of the Interpretation Act and [39]–[57] above. Whenever there are two or more plausible approaches in interpreting a provision, preference should be accorded to a construction that will promote the purpose of that provision and/or the applicable statute. In the present case, I find that the trial judge was unduly constrained by

unnecessary deference to the ordinarily disjunctive nature of the word "or" in s 133 of the Act. Further, she did not seem to have applied her mind to the wider legislative history as well as the ramifications of her preferred construction of s 133 of the Act. Interpreting the defence of innocent intention as constituting two disjunctive independent and alternative defences produces a paradoxical result that appears plainly inconsistent with and is contrary to the manifest intention of Parliament. I take the view, without diffidence, that s 133 of the Act prescribes a *single* defence of innocent intention that comprises two limbs: the lack of intent to defraud and the lack of intent to conceal the state of a bankrupt's affairs. *Both* these limbs must be established for a bankrupt accused to succeed in establishing the defence of innocent intention. This is the only interpretation that responds to the mischief that the Act is intended to snuff out. The scheme of the Act goes beyond protecting the narrow interests and limited rights of a bankrupt.