Tan Kiam Peng v Public Prosecutor
[2007] SGCA 38

Case Number : Cr App 8/2006

Decision Date : 28 September 2007

Tribunal/Court : Court of Appeal

Coram : Kan Ting Chiu J; Andrew Phang Boon Leong JA; Woo Bih Li J

Counsel Name(s) : B Rengarajoo (B Rengarajoo & Associates) and Patrick Tan Tse Chia (Patrick Tan & Associates) for the appellant; David Khoo (Attorney-General's Chambers) for the respondent

Parties : Tan Kiam Peng — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act – Illegally importing controlled drug – Possession of diamorphine – Accused arguing that he knew he was carrying controlled drugs but did not know drugs consisting of heroin – Nature of knowledge required under s 18(2) Misuse of Drugs Act – Whether necessary that accused knew precise nature of controlled drugs he was found in possession of – Whether knowledge encompassing constructive knowledge and wilful blindness – Section 18(2) Misuse of Drugs Act (Cap 185, 2001 Rev Ed)

28 September 2007

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 After hearing arguments made on behalf of both the appellant as well as the respondent, we dismissed the present appeal. We now give the detailed grounds for our decision.

2 We should also mention, at this preliminary juncture, that the present appeal raised important legal issues turning on the interpretation of s 18(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("the Act").

The factual background

3 The appellant was charged in the High Court as follows:

> That you, Tan Kiam Peng, on the 18th day of August 2005 at about 6.50pm, at the Inspection Pit Green Channel Left Lane 03, Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, ten (10) packets of granular/powdery substance containing not less than 145.07 grams (nett) of diamorphine, without authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

4 The appellant was convicted by the trial judge ("the Judge") and sentenced to suffer the mandatory death penalty (see *PP v Tan Kiam Peng* [2007] 1 SLR 522 ("GD")). The appellant appealed against his conviction and sentence.

5 The appellant had been in dire financial straits and had been looking for job opportunities in Kuala Lumpur since February 2005. Through a friend ("Ah Huat"), the appellant came to know a man,

known to him as "Uncle", whom the appellant hoped would give him a job transporting drugs such as ecstasy within Malaysia. The appellant regularly contacted Uncle thereafter in hope of finding work.

6 On 16 August 2005, the appellant again called Uncle to ask if there were any jobs available. The appellant was told that "there might be something for [him] to do". On 17 August 2005, he then travelled to Malaysia where he met Uncle in a hotel room in Sin Luck Hotel at about 5pm on 18 August 2005.

7 Uncle brought along a backpack which contained three big packets wrapped in mahjong paper. When each individual package was unwrapped, it revealed smaller plastic packets of yellowish powder. The appellant asked Uncle what those packets were, and Uncle merely held up three fingers in response. When the appellant told Uncle that it was "a lot", Uncle disagreed and used his fingers to indicate seven. These smaller packets were secured with tape onto various parts of the appellant's body by Uncle. Uncle then left the hotel.

8 On Uncle's instructions, the appellant checked out of the hotel at around 6.30pm and called for a private taxi to take him to Redhill, Singapore. The appellant was given a number to dial upon reaching Redhill to find out the exact delivery location.

9 However, at the customs clearance point at Woodlands ("the Woodlands checkpoint"), the car was subjected to a routine check. Police Constable Phua Han Siang ("Constable Phua"), a Cisco Auxillary Police officer attached to the Immigration Checkpoint Authority Supplementary Force, after noticing that the appellant looked nervous, asked him to step out of the vehicle. Constable Phua noticed that the appellant's waist area appeared "bulky". Constable Phua asked the appellant whether there was anything on him but the appellant gave a non-committal answer. Constable Phua patted the "bulky" part of the appellant's body and after confirming that there were strapped objects on the lower half of the appellant's body, directed him to another Cisco Auxillary Police officer, Lance Corporal Rosta bin Haji Dahlan ("L/Cpl Rosta") who was standing at Lane 05.

10 The appellant was brought to a search room by L/Cpl Rosta and another Cisco Auxillary Police officer, Lance Corporal Chin Wei Wen ("L/Cpl Chin"). They were joined by Constable Phua who had been directing a vehicle to an inspection pit earlier. Constable Phua, L/Cpl Rosta and L/Cpl Chin did a thorough body search of the appellant. They found nine plastic packets, containing a yellowish powdery substance, in the black tights worn by the appellant under his jeans and a similar plastic packet strapped to one of the appellant's thighs.

11 Sergeant Guo Yi An ("Sgt Guo"), Senior Staff Sergeant Lim Lian Huat ("SSSgt Lim") and Senior Staff Sergeant Razano ("SSSgt Razano") as well as two Central Narcotics Bureau ("CNB") officers, Staff Sergeant Anil s/o Rajendra Prasad ("SSgt Anil") and Woman Sergeant Jenny Woo Yoke Chun ("W/Sgt Jenny"), were also present in the search room when Constable Phua, L/Cpl Rosta and L/Cpl Chin did a body search of the appellant. The two CNB officers, SSgt Anil and W/Sgt Jenny, had been instructed by one Station Inspector Ong Lu Hieow ("SI Ong") to proceed first to the scene.

12 In his written statement,[note: 1] Constable Phua stated at para 5 that he had asked the appellant some questions pertaining to the said packets while carrying out the body search. However, this conversation was not documented. It was during cross-examination that the entire conversation that had transpired between the appellant and Constable Phua emerged. As this conversation was relied upon by the Judge in finding that the appellant knew the nature of the drugs that was in his possession and is therefore extremely important in the context of this appeal, the entire text of the relevant extract from the cross-examination is reproduced as follows:[note: 2]

Q: Now, let me read this:

[Reads]: "I asked the accused some questions pertaining to the said packets."

Can you tell the Court what are those questions that you asked?

A: Sir, I asked him in Hokkien.

Q: Yah, what you asked [*sic*] him?

A: "*Jee eh sim mee lai eh*?"

Q: Can you tell us that in English?

A: I asked him in Hokkien. I told him---I asked him, "What is this?" He told me that is number 3. ***Then I asked him again, "What number 3?" Then he still answer*** [*sic*]***"number 3".***

Court: Slow down, slow down.

A: Then he still answer [*sic*] me, "number 3". Then I asked him again, "Where are you going to send this number 3 to?" He---he told me that [*sic*] to Bukit Merah. Then after I asked him again, "For how much you are---for how much you are pay [*sic*] for this delivery?" He told me that it's S$800. Then I asked him again, "Why do you do this kind of thing?" He told him [*sic*] that he is going to be sued by the bank for bankruptcy and his HDB flat is going to [*sic*] seized by the government, Sir.

[emphasis added in bold italics]

13 After the body search, the appellant was escorted by Constable Phua, L/Cpl Rosta and L/Cpl Chin from the search room to the CNB office at the Woodlands Checkpoint ("the CNB Woodlands office"). They were accompanied by a CNB officer, SI Ong. At about 9.21pm at the interview room of the CNB Woodlands office, Inspector Jack Teng Jit Sun ("Insp Teng"), an inspector with the CNB attached to its Enforcement Division, recorded an oral statement made by the appellant pertaining to the contents of the packets of yellowish powder found strapped on the appellant's body.[note: 3] The conversation between Insp Teng and the appellant was in the Hokkien dialect and Staff Sergeant Ashari bin Hassan ("SSgt Ashari") was also present in the CNB office when Insp Teng conversed with the appellant. What transpired between the appellant and Insp Teng was also relied upon by the Judge in finding that the appellant knew the nature of the drugs he had in his possession and is therefore extremely pertinent to this appeal. The relevant portion of the conversation between the appellant and Insp Teng, according to the record made by Insp Teng (marked as Exhibit P37), was as follows:[note: 4]

Q1: What are these? (pointing to several packets of yellowish substance)

A1: I believed it is *heroin number 3*.

[emphasis added]

14 At about 1.15am on 19 August 2005, the appellant went with a group of seven CNB officers, comprising Staff Sergeant Tan Kah Chyoon ("SSgt Tan"), Woman Staff Sergeant Lim Sok Hoon

("W/SSgt Lim"), Sergeant Muhammad Fairus ("Sgt Fairus"), Sergeant Mohd Hafiz bin Jumali ("Sgt Hafiz"), W/Sgt Jenny, SI Ong and Insp Teng to the appellant's flat at Block 155 Woodlands Street 13 #05-761 ("the unit"). Nothing incriminating was found by the CNB officers at the unit.

15 During cross-examination, it emerged that SI Ong, one of the CNB officers who escorted the appellant to the CNB Woodlands office and who carried out the raid at the appellant's unit, had spoken to the appellant in the course of investigations. However, this conversation was not recorded. In fact, it is not apparent from SI Ong's statement[note: 5] when he spoke to the appellant, although it is clear that the conversation took place. As what transpired between the appellant and SI Ong was also relied upon by the Judge in reaching his decision in the court below, it would be useful to set out SI Ong's testimony, as follows:[note: 6]

Court: Did you speak to the accused?

Witness: Yes, I did.

Court: Can you recollect what was said?

Witness: Yes. I asked the accused what were those things. He told me that it was number 3.

Court: Anything else?

Witness: I asked him how much he was paid by bringing number 3 in. He told me that he was given $800.

Court: Anything else?

Witness: I also asked him whether he knew the driver. He replied that he did not know the driver. I asked him how did he contact the driver. He told me that his boss helped him to book the driver.

16 After the raid at the unit, the group of seven CNB officers brought the appellant to Alexandra Hospital for a medical examination. The appellant and the CNB officers left the hospital at about 2.40am and reached the CNB Headquarters Special Investigation Team ("SIT") office at about 3.10am where the appellant, his personal effects and his passport were handed over to the Investigating Officer, CNB ASP Herman Hamli ("ASP Herman").

17 It was only then that the appellant made four other statements ("the written statements") to ASP Herman:

(a) on 19 August 2005 at about 4.08am at CNB/SIT office room 0310C (Exhibit P60);[note: 7]

(b) on 20 August 2005 at about 3.05pm at CNB/SIT office room 0310C (Exhibit P62);[note: 8]

(c) on 22 August 2005 at about 11.05am at room B0310C, Police Cantonment Complex (Exhibit P63);[note: 9] and

(d) on 25 August 2005 at about 8.55am at room B0310C, Police Cantonment Complex (Exhibit P64).[note: 10]

The issues

18 The issue before this court was a short and simple one and is embodied succinctly within the appellant's own submissions before this court, as follows:

> The crux of the Appellant's defence was that while he knew he was importing illegal drugs, he did not know the precise nature of the drugs he was carrying. In other words, the Appellant did not know that the drugs had contained heroin.

19 This necessarily brings into play a consideration of s 18(2) of the Act, which reads as follows:

> Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

20 In order to succeed, the appellant had to rebut the presumption under s 18(2) of the Act (reproduced in the preceding paragraph as well as below at [54]).

21 More specifically, in his petition of appeal, the appellant argued that the Judge had erred in the following:

(a) Finding that the word "*peh hoon*" in Hokkien means heroin or diamorphine.

(b) Finding that the appellant knew that "number 3" or "*peh hoon*" was in fact heroin or diamorphine.

(c) Giving undue weight to an answer to a leading question that "number 3" refers to heroin in street parlance.

(d) Attributing to the appellant the knowledge of a class of people dealing in the "drug trade" that the reference to "number 3" points to heroin.

(e) Finding that "number 3" refers to heroin and that this is known to the appellant.

(f) Mistaking that the Defence was challenging all the three statements (statements made to Constable Phua, SI Ong and Insp Teng) on the presumed basis that "they unequivocally demonstrated the appellant's knowledge of what he was carrying" when only one of the statements was challenged.

(g) Mistaking that the procedural issue that was raised was for the purpose of excluding the statements made to Constable Phua and SI Ong from evidence when it was raised to show the distinction between an oral statement that was not reduced in writing and a statement recorded under section 121(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") and the weight to be given to the statement recorded by Insp Teng which was not an oral statement unlike the oral statements made to Constable Phua and SI Ong which were not reduced in writing.

(h) Accepting the third statement (the statement made to Insp Teng) as an oral statement when it was not an oral statement.

(i) Finding that the oral statements made to Constable Phua and SI Ong are inculpatory when they are exculpatory.

(j) Not giving due weight to the oral statements made to Constable Phua and SI Ong which

are exculpatory in nature.

(k) Failing to take cognisance of the fact that it was Insp Teng who translated the Hokkien word "*peh hoon*" to mean heroin when he recorded the appellant's statement.

(l) Not appreciating the variance between the oral statements made to Constable Phua and SI Ong *vis-à-vis* the statement recorded by Insp Teng.

(m) Holding that the appellant failed to make an exculpatory statement when he made an exculpatory statement in respect of the driver as to the "*peh hoon*" that was found on the appellant's body.

(n) Holding that the appellant should have stated that he is innocent in the long statement recorded by ASP Herman when the appellant was never asked what "number 3" was or whether he was importing heroin.

(o) Holding that the appellant should have stated in his statements that he was ignorant of the precise nature of the drug when in fact the appellant was never asked what "number 3" was at all material times; the appellant had merely narrated what Uncle told him, *ie*, "number 3".

(p) Finding that the appellant was virtually certain that the drug he was carrying was heroin but had wilfully chosen to turn a blind eye.

(q) Finding that the appellant did not ask Uncle about the nature of the drug.

22 All the appellant's arguments on appeal pertained to the Judge's findings of fact and his assessment of the veracity and credibility of the witnesses. Before considering each of these grounds of appeal, it must be noted that an appellate court customarily exercises great caution in evaluating factual findings and will not interfere with a trial judge's findings unless they are plainly wrong: see, for example, the decision of this court in *Lim Ah Poh v PP* [1992] 1 SLR 713. An appellate court, if it wishes to reverse the trial judge's decision, must not merely entertain doubts whether the decision is right but must be convinced that it is wrong: see, for example, the Singapore High Court decision of *PP v Azman bin Abdullah* [1998] 2 SLR 704. It should also be pointed out that although all the aforementioned grounds set out in the preceding paragraph will be considered, they will not be considered in the strict order set out above as some of these grounds overlap and (more importantly) constitute parts of an integrated whole that focuses, in the final analysis, on the central issue set out at [18] above. We will, in fact, be considering these grounds by reference to, as well as in the context of, the appellant's own arguments in this particular appeal as these arguments embody all these grounds as well as other arguments – all of which are part of an integrated whole which, it bears repeating, focuses on the central issue in [18] above.

The interpretation and application of s 18(2) of the Act

The underlying policy of the Act

23 The ultimate interpretation of s 18(2) of the Act must, as far as is possible, give effect to the underlying policy of the Act itself. The corollary of this obvious – yet utterly fundamental – proposition is that any interpretation that would undermine or frustrate such policy ought to be eschewed. Hence, it would be appropriate to commence with a consideration of the underlying policy of the Act.

24 We commence with a fundamental and self-evident proposition: In order to give effect to the policy referred to in the preceding paragraph, the court must not distort the relevant statutory language.

25 All the above principles are premised on the basic – and irreducible as well as non-negotiable – proposition that the courts do *not* act as "*mini-legislatures*".

26 Returning to the underlying policy of the Act, an even cursory perusal of the relevant parliamentary debates will reveal that the *public interest* was – and continues to be – of paramount importance. Indeed, there are few local statutes where the legislative intention is clearer.

27 During the Second Reading of the Bill introducing what was ultimately enacted as the Misuse of Drugs (Amendment) Act 1975 (Act 49 of 1975) (which, most significantly, introduced the death penalty for drug trafficking for the first time), the then Minister for Home Affairs and Education, moving the Bill, observed thus (see *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at cols 1379–1381):

> Sir, the tragedy of drug abuse has been presented in terms of the individual drug abuser and his family. The irreparable damage caused by drug addiction to the health and career of the drug abuser and the sorrow, anxiety and the shame caused to the family has often been emphasised. This, therefore, need not be elaborated upon here.
>
> But what is not sufficiently appreciated is the threat that drug addiction poses to national security and viability. If drug abuse were to be allowed to grow unchecked, particularly among our youths, we would eventually be faced with a dangerous national security problem. In no time we would find that it had penetrated right into the vital and sensitive institutions of the State, like the Police and the Armed Forces.
>
> …
>
> Rampant drug addiction among our young men and women will also strike at the very foundations of our social fabric and undermine our economy. Once ensnared by drug dependence they will no longer be productive digits contributing to our economic and social progress. They will not be able to carry on with their regular jobs. Usually for the young men, they turn to all sorts of crime, and for the girls, to prostitution to get money to buy their badly needed supply of drugs. Thus, as a developing country, our progress and very survival will be seriously threatened.
>
> 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. Further, the manufacture of morphine and heroin is not a complicated process and can be done in as small a space as a toilet. Our Central Narcotics Bureau has intelligence information that much of the heroin brought into Singapore has been manufactured in illicit laboratories clandestinely established in a neighbouring country. The Central Narcotics Bureau also reported that there was an abortive attempt to set up an illicit heroin laboratory in Singapore itself.
>
> 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.

28 And, in the judicial context, F A Chua J, delivering the grounds of judgment of the court in the Singapore Court of Criminal Appeal decision of *Ng Kwok Chun v PP* [1993] 1 SLR 55, observed (at 60, [19]) that "[i]t is unnecessary to stress the damage that non-medical use of heroin and morphine can inflict upon the society at large". Further, in the court below, the Judge observed thus (GD at [8]):

> The drug trade is a major social evil. While drug peddlers may not be visibly seen or caught taking away or damaging lives, they nonetheless inflict alarmingly insidious problems on society that have the potential to destroy its very fabric if left unchecked. Each successful trafficker has the disturbing potential to inflict enormous and enduring harm over an extremely wide circle of victims. Apart from the harm that drugs inflict on an addict's well-being, drug trafficking engenders and feeds a vicious cycle of crime that inexorably ripples through the community.

29 So much by way of a summary of the underlying policy of the Act. Before proceeding to analyse s 18(2) of the Act proper, it would be appropriate to clarify a House of Lords decision that has been cited numerous times by Singapore courts.

The significance of Warner v Metropolitan Police Commissioner

30 One of the most oft-cited decisions in the context of the local case law is the House of Lords decision of *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 ("*Warner*"). This is not surprising as the case itself contains much *general* discussion – specifically, on the meaning of the concept of possession. However, we are of the view that, the particular advantage just mentioned notwithstanding, it must also be borne in mind that the rest of the discussion in *Warner* is (owing to the different statutory contexts) irrelevant and that the application of *Warner* ought therefore to be confined only to the point of *general* principle (with respect to the concept of possession).

31 Simply put, the facts in *Warner* were as follows. The accused had two packages in his car when he was stopped by the police. His defence was that he believed that both packages contained scent, whereas one of the packages contained a prohibited drug. He was charged under s 1(1) of the then UK Drugs (Prevention of Misuse) Act 1964 (c 64) ("the 1964 UK Act"). A point of law of general public importance was in fact stated by the Court of Appeal for decision by the House, as follows:

> Whether for the purposes of section 1 of the Drugs (Prevention of Misuse) Act 1964, a defendant is deemed to be in possession of a prohibited substance when to his knowledge he is in physical possession of the substance but is unaware of its true nature.

32 The material part of the s 1(1) of the 1964 UK Act itself read as follows:

> [I]t shall not be lawful for a person to have in his possession a substance for the time being specified in the Schedule to this Act unless …

33 The actual holding with regard to the issue just stated is clear: The majority of the House in *Warner* held that that provision created an *absolute* offence (in this regard, however, Lord Reid delivered a powerful, albeit lone, dissenting judgment).

34 It should be noted, at the outset, that, unlike the provisions of the Act, s 1(1) of the 1964 UK Act was *silent* with respect to the issue as to whether or not *mens rea* was required; the word

"knowingly" – and/or allied words – did not appear in the provision itself (this was particularly emphasised by Lord Guest in *Warner* at 300). It should also be noted that s 1(1) of the 1964 UK Act also expressly sets out exceptions under which the persons concerned could lawfully possess drugs – thus suggesting that all other situations would fall within the ambit of the provision, regardless of whether or not *mens rea* was present (a point emphasised, for example, by Lord Pearce and Lord Wilberforce in *Warner* at 304–305 and 312, respectively). However, it should also be noted that the *reasoning of the various law lords* (even amongst the majority) did differ. An excellent summary may in fact be found in the UK Law Commission's *Report on the Mental Element in Crime* (Law Com No 89, 1978) ("Law Commission Report") at paras 33–34, and we therefore do not propose to examine the various judgments in *Warner* in detail, save where certain passages might throw light on the interpretation of the Act. However, it should be noted that although the majority found that the offence concerned was an absolute one, it also held that the summing-up by the trial judge to the jury was wanting. The majority nevertheless proceeded to hold that the evidence was so strong that no jury properly directed would have acquitted the accused and therefore dismissed the accused's appeal, applying the proviso to s 4(1) of the UK Criminal Appeal Act 1907 (c 23) (as amended by s 4 of the UK Criminal Appeal Act 1966 (c 31)).

35 One key distinction between the situation in *Warner* and that under the Act is that, *unlike* the 1964 UK Act, the Act does *not* create *absolute* offences. It is true that the Act does lay down (*inter alia*, in ss 18(1) and 18(2)) presumptions that the accused must rebut on a balance of probabilities (see below at [60]). However, the situation under the Act is nevertheless an advance over a situation where (as in *Warner*) the statutory offences are absolute in nature (and see *per* Choo Han Teck J, delivering the judgment of the court in the Singapore Court of Appeal decision of *Iwuchukwu Amara Tochi v PP* [2006] 2 SLR 503 at [9] ("*Tochi*") (see also at [41] below)). It should, nevertheless, be noted that even in *Warner* itself, despite the holding of the majority that s 1 of the 1964 UK Act created an absolute offence, most of the law lords in the majority did not, in *effect*, go so far as to adhere to this particular holding without any qualification whatsoever (apart from Lord Guest). Indeed, the following view expressed by Lord Parker CJ in the English Court of Appeal decision of *Lockyer v Gibb* [1967] 2 QB 243 (at 248) was clearly endorsed in *Warner* itself:

> In my judgment it is quite clear that a person cannot be said to be in possession of some article which he or she does not realise is, for example, in her handbag, in her room, or in some other place over which she has control. That I should have thought is elementary; *if something were slipped into your basket and you had not the vaguest notion it was there at all, you could not possibly be said to be in possession of it.* [emphasis added]

36 Further, Lord Pearce, despite endorsing the proposition to the effect that s 1 of the 1964 UK Act created an absolute offence, did proceed to observe thus (*Warner* at 305–306):

> The situation with regard to *containers* presents *further problems*. If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents. *But* can this be *rebutted* by evidence that he was mistaken as to its contents? *As in the case of goods that have been "planted" in his pocket without his knowledge*, so I do *not* think that *he is in possession* of *contents which are quite different in kind from what he believed. Thus* the prima facie assumption is *discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it* ***and*** [emphasis in original] *no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk*

as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal. [emphasis added]

37 The above observation by Lord Pearce (see also, in similar vein, by the same law lord at 307–308 and by Lord Wilberforce at 312, as well as Lord Pearce's views on *Warner* itself in the subsequent House of Lords decision of *Sweet v Parsley* [1970] AC 132 at 157–158; though *cf* the interpretation of Lord Pearce's judgment in *Warner* by Michael Hor in "Managing *Mens Rea* in Singapore" (2006) 18 SAcLJ 314, especially at paras 30–43, which, however, is (in turn) to be contrasted with the observations expressed by Rudi Fortson in the leading UK work, *Misuse of Drugs and Drug Trafficking Offences* (Sweet & Maxwell, 4th Ed, 2002) ("*Fortson*") at para 3-31) was in fact referred to by the Singapore Court of Criminal Appeal in *Chan Chi Pun v PP* [1994] 2 SLR 61 ("*Chan Chi Pun*") (*cf* also the decision of the Singapore Court of Appeal in *Lim Beng Soon v PP* [2000] 4 SLR 589). However, in applying both what it perceived to be the "*common law* test" [emphasis added] under *Warner* and the position pursuant to s 18(2) of the Act, the court in *Chan Chi Pun* perhaps went, with respect, a little too far. As we shall elaborate in more detail below, the first port of call in the local context must surely be the actual language of the relevant provisions of the Act itself. Indeed, in a decision of this court in *Cheng Heng Lee v PP* [1999] 1 SLR 504 at [46] ("*Cheng Heng Lee*"), the same observation appeared (in contrast) to be utilised in the context of rebutting the presumption under s 18(2) of the Act (*cf* also another decision of this court in *Chou Kooi Pang v PP* [1998] 3 SLR 593 at [18]–[20] as well as the Singapore High Court decision of *PP v Lee Ngin Kiat* [1993] 2 SLR 181 at [13]–[16] (affirmed in *Lee Ngin Kiat v PP* [1993] 2 SLR 511 ("*Lee Ngin Kiat*"), but without, apparently, any discussion of this particular issue, simply because counsel for the accused had conceded that the drugs concerned were in the latter's possession)).

38 Whilst still on the key distinction between the Act and the 1964 UK Act, it would be pertinent to note that at least two of the law lords in *Warner* recognised that there might be a need for the *enactment* of a *statutory* provision in the UK context *along the lines of s 18(2) of the Act*. For example, Lord Reid observed as follows (*Warner* ([30] *supra*) at 279–280):

> So it would be quite sufficient to prove facts from which it could properly be inferred that the accused knew that he had a prohibited drug in his possession. That would not lead to an unreasonable result. In a case like this *Parliament*, if consulted, might think it right to transfer the onus of proof so that an accused would have to prove that he neither knew nor had any reason to suspect that he had a prohibited drug in his possession. [emphasis added]

39 And in the same case, Lord Pearce observed thus (at 302–303):

> Thirdly, Parliament may have intended what was described as a "half-way house" in the full and able argument by counsel on both sides. Each acknowledged its possibility and certain obvious advantages, but neither felt able to give it any very solid support. By this method the mere physical possession of drugs would be enough to throw on a defendant the onus of establishing his innocence, and unless he did so (on a balance of probabilities) he would be convicted. … Unfortunately I do not find the half-way house reconcilable with the speech of Viscount Sankey L.C. in *Woolmington's* case [1935] A.C. 462, 481. Reluctantly, therefore, I am compelled to the decision that it is not maintainable. Ultimately the burden of proof is always on the prosecution *unless it has been shifted by any statutory provision*. [emphasis added]

40 More importantly, the same law lord observed, later in his judgment, as follows (at 307):

> It would, I think, be *an improvement* of a difficult position *if Parliament were to enact that when a person has ownership or physical possession of drugs he shall be guilty unless he proves on a balance of probabilities that he was unaware of their nature or had reasonable excuse for their possession*. [emphasis added]

41 It is important to pause at this juncture and note that what was suggested by Lord Reid as well as Lord Pearce above is, in substance, already embodied within s 18(2) of the Act itself (interestingly, too, the UK position is presently governed by s 28 of the Misuse of Drugs Act 1971 (c 38) ("the 1971 UK Act"), as a result of the invitation of Lord Pearce (see at [40] above): *per* Lord Bonomy in the Scottish decision of *Salmon v HM Advocate* [1999] SLT 169 at 186, who also observed that "[i]n s 28 Parliament set out defences echoing, to a considerable extent, the views of their Lordships in *Warner* about the circumstances which led, or should lead, to an acquittal on a charge of unlawful possession and reflecting the views of Lord Pearce about the action which Parliament should take to clarify the law"; see also the English Court of Appeal decision of *R v James McNamara* (1988) 87 Cr App R 246 at 251 ("*McNamara*")). Indeed, Lord Pearce's observation (see at [40] above) was referred to by Choo J in *Tochi* ([35] *supra*), thus confirming the point just made. However, any suggestion that the origin of s 18(2) can be traced to this suggestion in *Warner* is, with respect, misconceived since (as we shall see below at [64]–[69]), s 18 had its statutory analogues much *earlier* in the *local* context – stretching as far back as 1927.

42 Returning to Lord Reid's observations quoted above (at [38]), the learned law lord proceeded (contrary to the decision of the remaining (majority) judges) to hold that the offence prescribed under the 1964 UK Act was not an absolute one so that, in any event, the accused would be afforded an opportunity to show that he neither knew nor had any reasons to suspect that he had a prohibited drug in his possession.

43 Another key point is this: Lord Reid, who (as we have noted) delivered a powerful dissent, nevertheless proceeded to *endorse*, first, the doctrine of *wilful blindness*, which we shall consider in more detail below (at [106]–[132]). Suffice it to state at this relatively preliminary juncture that wilful blindness is considered, in law, to be the equivalent of *actual* knowledge.

44 More importantly, perhaps, *even Lord Reid* was of the view that it was unnecessary for the prosecution to prove that the accused knew that he had the *precise* drugs concerned in his possession (indeed, this was *not*, apparently, what the *accused* himself had argued for in *Warner*: see, for example, at 290 and 300, *per* Lord Morris of Borth-y-Gest and Lord Guest, respectively). As the learned law lord observed (*Warner* ([30] *supra*) at 279):

> Further it would be *pedantic* to hold that it must be shown that the accused knew *precisely* which drug he had in his *possession*. *Ignorance of the law is no defence and in fact virtually everyone knows that there are prohibited drugs. So it would be quite sufficient to prove facts from which it could properly be inferred that the accused knew that he had a prohibited drug in his possession*. [emphasis added]

The observation embodied in the above quotation is, in fact, of *general* import. And it is an important one, to which we shall return later in this judgment (at [86]–[87]).

45 In a similar vein, Lord Morris observed thus (*Warner* at 286):

> I think that the notion of having something in one's possession involves a mental element. It involves in the first place that you know that you have something in your possession. It does *not*, however, involve that you *know precisely* what it is that you have got. [emphasis added]

Again, the learned law lord later observed thus (at 289):

> The question resolves itself into one as to the nature and extent of the mental element which is involved in "possession" as that word is used in the section now being considered. In my view, in order to establish possession the prosecution must prove that an accused was knowingly in control of something in circumstances which showed that he was assenting to being in control of it: they need *not* prove that in fact he had actual knowledge of *the nature of that which he had*. [emphasis added]

Later on in his judgment, Lord Morris also stated (at 295) that:

> [B]efore the prosecution can succeed they must prove that a person knowingly had in his possession something which in fact was a prohibited substance. In my view, the prosecution discharged that onus in this case. Was it, however, for the prosecution to prove that the appellant *knew the nature and quality* of that which he had? In my view, it was *not*. [emphasis added]

46 And Lord Wilberforce had occasion to observe thus (at 310–311):

> [I]n addition to physical control, he has, or ought to have imputed to him the intention to possess, or knowledge that he does possess, what is in fact a prohibited substance. If he has this intention or knowledge, it is *not additionally necessary that he should know the nature of the substance.* [emphasis added]

The same law lord, referring to the decision of *Lockyer v Gibb* ([35] *supra*), later proceeded to state as follows (at 311):

> One can only hold this decision to be wrong if the view is taken that to constitute possession under this legislation knowledge not merely of the presence of the thing is required but *also knowledge of its attributes or qualities. But* (except perhaps under the old law of larceny) *no definition or theory of possession requires so much, nor does the language or scheme of the Act postulate that such a degree of knowledge should exist.* I think the line was drawn here at the right point. [emphasis added]

47 Likewise, Lord Pearce also observed as follows (at 304):

> But when a man knows that he physically has an article in his possession, how far does a mistake as to its essential attributes nullify the apparent possession? It would be, for instance, quite unreal (and particularly in such a context as one is here considering) to say that a man who bought and kept a so-called authentic Rembrandt for years, never had it in his possession because he later found by X-ray examination that it was a skilful fake. *When one draws a distinction between a thing and its qualities, one gets involved in philosophic intricacies which are not very appropriate to a blunt Act of Parliament intended to curb the drug traffic.* [emphasis added]

48 Perhaps more importantly, Lord Pearce proceeded, later on in his judgment, to observe thus (at 305):

> One may, therefore, exclude from the "possession" intended by the Act the physical control of articles which have been "planted" on him without his knowledge. [see also at [35] above] *But how much further is one to go?* ***If one goes to the extreme length of requiring the***

> ***prosecution to prove that "possession" implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term "possession" is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to its qualities is not an excuse*.** This would comply with the general understanding of the word "possess". Though I reasonably believe the tablets which I possess to be aspirin, yet if they turn out to be heroin I am in possession of heroin tablets. This would be so I think even if I believed them to be sweets. It would be otherwise if I believed them to be something of a wholly different nature. *At this point a question of degree arises as to when a difference in qualities amounts to a difference in kind. That is a matter for a jury* who would probably decide it sensibly in favour of the genuinely innocent but against the guilty. [emphasis in italics and additional emphasis in bold italics added]

49 Indeed, the words in bold italics in the above quotation were applied by this court in *Tan Ah Tee v PP* [1978-1979] SLR 211 ("*Tan Ah Tee*") (see also the Singapore High Court decision of *PP v Tan Siew Lam* [2000] SGHC 161 at [15]). And, in the Singapore High Court decision of *Shan Kai Weng v PP* [2004] 1 SLR 57, Yong Pung How CJ observed thus (at [24]):

> The position under our law, therefore, is that possession is proven once the accused knows of the existence of the thing itself. *Ignorance or mistake as to its qualities is no excuse.* The appellant knew that the tablet was in his car. He believed it to be a sleeping pill, which, like the aspirin of the hypothetical in *Warner* and *Tan Ah Tee*, is a drug. As such, his ignorance as to the qualities of the tablet did not provide him a defence to the charge of possession, and his contention that he did not understand the nature of his plea could not stand. [emphasis added]

50 However, we are of the view that that part of Lord Pearce's observations quoted at [48] above – to the effect that if the accused reasonably believed the tablets he or she possessed to be aspirin but that if the tablets concerned turned out to be heroin, the accused would still be assumed to be in possession of heroin tablets even if he or she believed them to be sweets – goes a little too far (see also GD, especially at [33]), and can be explained on the basis that the learned law lord was of the view that s 1 of the 1964 UK Act created an *absolute* offence. Nevertheless, to the extent that they relate to the *general* principle to the effect that it is *unnecessary* for the accused to know the *precise nature* of the drug concerned, Lord Pearce's observations are both relevant and helpful. Further, as the learned law lord himself proceeded to point out, the accused would not be in possession of a thing if he or she believed it "to be something of a wholly different nature" and that "[a]t this point a question of degree arises as to whether a difference in qualities amounts to a difference in kind", which was itself "a matter for a jury" (see above at [48]). Indeed, this last-mentioned observation emphasises the very factual nature of the entire inquiry. It is also important to note that even *Lord Reid* (who was of the (minority) view that s 1 of the 1964 Act did *not* create an *absolute* offence) expressed *a similar view* with respect to the general principle just mentioned (see at [44] above). In the circumstances, therefore, it might, with respect, have been preferable, in fact, for this court in *Tan Ah Tee* to have cited *Lord Reid's* view instead.

51 This particular aspect of *Warner* is, as alluded to in the preceding paragraph and as we shall see (at [87] below), one of *general* applicability, as it deals with *the concept of possession*. However, as already pointed out above, the central thrust of *Warner* is *quite different* from the situation embodied within the Act (and ss 18(1) and 18(2) thereof in particular). Hence, *apart from this* particular aspect of *Warner* (which we endorse below (at [86]–[87])), we are of the view that *Warner* should play little or no part in the Singapore jurisprudence in this particular area of the law.

52 *Warner* was, in fact, given much prominence in *Tan Ah Tee* ([49] *supra*). There has also been

a very long line of local cases that have continued to cite both *Tan Ah Tee* as well as *Warner*. Indeed, in this court's decision in *Fun Seong Cheng v PP* [1997] 3 SLR 523 ("*Fun Seong Cheng*"), it was observed (at [55]) that "[a] long line of cases have since followed *Tan Ah Tee* [[49] *supra*] and *Warner v Metropolitan Police Commissioner* [[30] *supra*]". This is no exaggeration and it would serve no purpose to list out the numerous cases in this particular regard. Indeed, there was even one instance where *Warner* was applied, with the court holding that no reliance need be placed on s 18(1) of the Act (see the Singapore Court of Criminal Appeal decision of *Low Kok Wai v PP* [1994] 1 SLR 676), although this particular decision can be explained on the basis that it was clear, on the facts, that the accused not only had the only key to the car in which the drugs were found but also knew that the said drugs were in the car. Looked at in this light, it was clear that there was no need to rely on the presumption in s 18(1) of the Act as such.

53 What is important in the context of the Act in general and this appeal in particular is the fact that *Tan Ah Tee only* endorsed that part of Lord Pearce's judgment in *Warner* which dealt with the *general concept* of *possession.* It is important to emphasise, once again, that the same approach is, in fact, also to be found in the judgment of Lord Reid in the same decision. Indeed, because the learned law lord differed from Lord Pearce with regard to the interpretation to be accorded to s 1 of the 1964 UK Act, it is clear beyond peradventure that he was indeed dealing with the *general concept* of *possession* (see also at [44] and, especially, [50] above)). It is also important to note that the different statutory regimes embodied, respectively, in both *Warner* and the Act (as noted above) do *not* therefore impact in any way on the views expressed on this *general concept*.

Introduction to s 18(2) of the Act

54 As already mentioned, the principal focus in the present appeal is on s 18(2) of the Act. However, s 18(2) must be read together with s 18(1) to the extent that if the accused successfully rebuts the presumption under s 18(1), the presumption under s 18(2) will not arise (see the Singapore Court of Appeal decision of *Lim Lye Huat Benny v PP* [1996] 1 SLR 253 ("*Lim Lye Huat Benny*") at 261, [19]). This follows, in fact, from the language as well as logic of ss 18(1) and 18(2) themselves. It will therefore be useful to set out both provisions, which read as follows:

> **Presumption of possession and knowledge of controlled drugs**
>
> 18.—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (a) anything containing a controlled drug;
>
> (b) the keys of anything containing a controlled drug;
>
> (c) the keys of any place or premises or any part thereof in which a controlled drug is found; or
>
> (d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

It should, however, also be clarified that if the prosecution *actually proves* that the accused is, in fact, *in possession* of a controlled drug, then the presumption under s 18*(2)* of the Act would *still operate* (*unless*, of course, it is proved that the accused has *actual knowledge* of the nature of the drug, in which case there would be *no need to invoke* the *presumption* under s 18(2)). In such a situation (*viz*, one where the prosecution actually proves that the accused is, in fact, in possession of a controlled drug), there is simply *no need to invoke* the presumption under s 18*(1)* of the Act in the first instance. This is, in fact, the situation in the present appeal.

55 This is therefore clearly *not* a situation where *mens rea* has been dispensed with by Parliament (the general principles governing such a situation are set out succinctly by the Judicial Committee of the Privy Council in *Lim Chin Aik v The Queen* [1963] AC 160 and *Gammon (Hong Kong) Ltd v Attorney-General of Hong Kong* [1985] AC 1, both cases of which were applied in the Singapore High Court decision of *PP v Phua Keng Tong* [1986] SLR 168, and the latter case of which was applied in the (also) Singapore High Court decision of *PP v Teo Kwang Kiang* [1992] 1 SLR 9). However, because of the policy underlying the Act as well as the practical difficulty (in the nature of things) for the prosecution to prove possession and knowledge on the part of the accused, the presumptions in ss 18(1) and 18(2) have been introduced to mitigate this particular difficulty and ensure not only that the policy underlying the Act is not frustrated but also that it is fulfilled.

56 At this juncture, we should note that the charge against the appellant in the present case involves the offence of *importing* a controlled drug under s 7 of the Act. Section 7 itself reads as follows:

> **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.

57 And, in s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), "export" and "import" are, "unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided", assigned the following respective meanings:

> "export", with its grammatical variations and cognate expressions, means to take or cause to be taken out of Singapore by land, sea or air;
>
> …
>
> "import", with its grammatical variations and cognate expressions, means to bring or cause to be brought into Singapore by land, sea or air;

58 The sole task of this (indeed, every) court is to give effect to the plain meaning of the statutory language before it in a manner that is not only consistent with the underlying policy of the Act but which (wherever possible) fulfils it (see also at [23] above).

59 However, as we have already pointed out (at [24]–[25] above), the court cannot re-write the statutory language in order to achieve these objectives. The task before the court, simply put, is to interpret the statutory language in the *context* of the statute as a whole, bearing in mind the purposive approach toward statutory interpretation which is now embodied in s 9A of the Interpretation Act, which reads as follows:

> **9A.**—(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.

...

60 As an important general (and preliminary) point, it is important to note that the local courts have been astute to ensure that the presumptions under s 18 of the Act are triggered only if the conditions therein have been strictly proved. However, once the conditions in ss 18(1) and 18(2) have been satisfied, the accused bears the burden of rebutting the presumptions therein on a balance of probabilities (see, for example, the Singapore Court of Appeal decisions of *Wong Kee Chin v PP* [1978-1979] SLR 114 at 122, [33]; *Tan Ah Tee* ([49] *supra*); *PP v Virat Kaewnern* [1993] 2 SLR 9; *Van Damme Johannes v PP* [1994] 1 SLR 246 at 249, [9] ("*Van Damme Johannes*"); *Fok Chia Siong v PP* [1999] SGCA 5 at [49]; *Wong Soon Lee v PP* [1999] SGCA 42 at [32] ("*Wong Soon Lee*"); *Anand Naidu a/l Raman v PP* [2000] SGCA 67 at [23]; and *Tochi* ([35] *supra*); the Singapore Court of Criminal Appeal decision of *Tan Boon Tat v PP* [1992] 2 SLR 1 ("*Tan Boon Tat*") at 14, [55]; as well as the Singapore High Court decision of *PP v Yeoh Aik Wei* [2002] SGHC 225 at [31] (affirmed in *Yeoh Aik Wei v PP* [2003] SGCA 4) and GD at [18] and [20]). And whether or not the presumption has been rebutted is "entirely a question of fact" (*per* Rajendran J, delivering the grounds of judgment of the court in *Tan Boon Tat*, *supra* at 14, [55]). In this regard, the appellate court would pay great deference to the trial court in so far as the assessment of the *credibility* of the accused is concerned (see *id* as well as the (also) Court of Appeal decision of *Abdul Ra'uf bin Abdul Rahman v PP* [2000] 1 SLR 683 at [29] ("*Abdul Ra'uf*") and the Singapore Court of Criminal Appeal decision of *Loh Kim Cheng v PP* [1998] 2 SLR 315 at [21]; see also above at [22]).

61 Turning to a consideration of ss 18(1) and 18(2) proper, it is clear, in our view, that the former deals with the concept of possession (often, but not invariably, physical in nature: see *Van Damme Johannes* ([60] *supra*) at 249, [8]) whilst the latter deals with the *knowledge* of the nature of the thing possessed. The former is also a pre-requisite before the latter can be considered. Put simply, if no possession on the part of the accused is proved in the first instance, it is futile – indeed, illogical – to consider whether there is knowledge of the nature of the thing possessed (see, for example, the Singapore High Court decision of *PP v Wong Wai Hung* [1993] 1 SLR 927, where the second accused was therefore acquitted). This interpretation is supported not only by the language of ss 18(1) and 18(2) but also by the heading of s 18 itself, which reads as follows: "Presumption of possession *and* knowledge of controlled drugs" [emphasis added] (see also above at [54]; and on the utility of headings and marginal notes generally, see the recent decision of this court in *Tee Soon Kay v Attorney-General* [2007] 3 SLR 133 at [37]–[41]). Further, in *Fun Seong Cheng*, Karthigesu JA, who delivered the grounds of judgment of the court, observed ([52] *supra* at [54]):

Physical control is not enough for the purpose of proving possession. There needs to be mens rea on the part of the accused.

62 Even more to the point are the following observations by Yong Pung How CJ in *Van Damme Johannes* ([60] *supra* at 249, [9]):

[C]ounsel for the appellant submitted that a person cannot be in possession of something if he did not know or have knowledge of its contents. This argument clearly involves a misreading of s 18. *'Possession' and 'knowledge' are distinct and dealt with separately under s 18(1) and s 18(2) respectively.* The initial onus was on the prosecution to prove possession of anything containing a controlled drug (in this case, the suitcase), after which the appellant was presumed (i) to have the drug in his possession and (ii) to know the nature of the controlled drug. The onus

was then on the appellant to rebut the two presumptions on a balance of probabilities and this argument should rightly have been dealt with under the second ground of appeal to which we now turn. [emphasis added]

63 We note, however, that there was no need to invoke the presumption in s 18(1) of the Act in the present appeal. That is why the focus was on s 18(2) instead. There was no need to invoke s 18(1) simply because the appellant himself *admitted* that he *had physical possession* of the controlled drugs in question (see also at [54] above). Indeed, they were strapped to various parts of his body as briefly described in an earlier part of this judgment. In any event, s 18(1) of the Act was not intended to cover such clear-cut situations as that which existed in the present appeal. Looking closely at the provision itself, it is clear that the presumption as to physical possession will only be triggered where the accused "is proved to have had in his possession or custody or under his control" "*anything containing* a controlled drug" *or* "*the key of anything containing* a controlled drug" *or* "*the keys of any place or premises or any part thereof* in which a controlled drug is found" *or* "*a document of title* relating to a controlled drug *or any other document intended for the delivery of* a controlled drug" [emphasis added]. Where, as in the present appeal, the accused has the controlled drugs *strapped directly* on his body, he *cannot* claim ignorance that the controlled drugs were in his physical possession. However, in the various situations set out in s 18(1) of the Act, it is indeed possible for the accused to make such a claim, which is an altogether easy as well as convenient one to make and for which the presumption exists as a counterpoint in order to ensure that the policy of the Act is not undermined by such convenient excuses inasmuch as the accused would have the burden of proof of rebutting the presumption on a balance of probabilities (see [60] above). That presumptions such as those contained in s 18(1) of the Act are clearly justified in principle is a point that is discussed in more detail below (at [75]).

64 It is interesting, at this juncture, to note that the presumptions in s 18(1) and 18(2) of the Act are not novel. Indeed, a similar set of presumptions (also in relation to an offence centring on possession of controlled drugs) can be found as far back as 1927 – in s 17 of the Straits Settlements Deleterious Drugs Ordinance 1927 (SS Ord No 7 of 1927) ("the 1927 Ordinance"). Similar offences were to be found in earlier Ordinances (see, for example, s 5(3) of the Straits Settlements Deleterious Drugs Ordinance 1907 (SS Ord No 14 of 1907) and s 16 of the (also) Straits Settlements Deleterious Drugs Ordinance 1910 (SS Ord No 27 of 1910)), but none contained any presumptions prior to the 1927 Ordinance. Section 17 of the 1927 Ordinance itself read as follows (including the marginal notes):

> Offences relating to directions of a medical practitioner or veterinary surgeon
>
> 17.-(1) Any person, other than a person acting under the directions of a medical practitioner or veterinary surgeon, who
>
> (a) is found in possession of; or
>
> (b) is proved to have had possession of
>
> any deleterious drug shall be guilty of an offence, unless he is or was at the time of such possession authorised in that behalf by a licence under this Ordinance.

Presumptions

(2) Any person who is proved to have had in his possession or under his control any thing whatsoever containing any deleterious drug shall, until the contrary is proved, be deemed to have been in possession of such drug, and shall, until the contrary is proved, be deemed to have known the nature of such drug.

(3) Any person who is proved to have had in his possession or under his control or subject to his order any document of title relating to any thing whatsoever containing any deleterious drug shall, until the contrary is proved, be deemed to have been in possession of such drug, and shall, until the contrary is proved, be deemed to have known the nature of such drug.

[emphasis added]

65 Although the layout of s 17(2) and (3) of the 1927 Ordinance differs from that contained in ss 18(1) and 18(2) of the Act (reproduced at [54] above), the overall substance (and, certainly, spirit) of both appear to be *the same*. There does not appear to be much by way of legislative background in so far as s 17 of the 1927 Ordinance is concerned. The material parts of the *Objects and Reasons* to the Bill read as follows (see *The Straits Settlements Government Gazette 1927* (11 February 1927) at p 288):

> The object of this Bill is to amend the law relating to deleterious drugs so as to embody in it such of the provisions of the International Opium Convention signed at Geneva on the 19th February, 1925, as are applicable to the Colony. The principal amendments are the following :-
>
> …
>
> 4. A person who has in his possession any thing containing a deleterious drug, or any document of title relating to any thing containing a deleterious drug, is presumed to know that nature of such drug. (clause 17).
>
> [emphasis added]

66 Indeed, the proposed clause 17 referred to in the preceding paragraph was clearly new, as evidenced by the following observation by the then Attorney-General during the First Reading of the Deleterious Drugs Bill (see *Proceedings of the Legislative Council of the Straits Settlements, 1927, Shorthand Report* (Monday, 7 February 1927) at p B11):

> In clause 17, (2) and (3) are *two new presumptions*: any person who has in his possession or under his control any thing containing a deleterious drug or a document of title relating to any thing containing a deleterious drug shall be deemed to be in possession of the drug and to know its nature. [emphasis added]

67 Significantly, this particular clause was in fact subsequently passed without amendment (see the Second Reading of the Deleterious Drugs Bill at *Proceedings of the Legislative Council of the Straits Settlements, 1927, Shorthand Report* (Monday, 21 March 1927) at p B44).

68 The above presumptions were, in fact, later consolidated under a separate section in the Singapore Dangerous Drugs Ordinance 1951 (Ordinance No 7 of 1951) – in particular, s 37(d) and (e), which read as follows (the marginal note of which simply states, "Presumptions"):

> **37.** In all proceedings under this Ordinance or any regulation made thereunder—
>
> …
>
> *(d) any person who is found to have had in his custody or under his control any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug;*
>
> *(e) any person who is found to have had in his possession or under his control or subject to his order any document of title relating to any dangerous drug shall, until the contrary is proved, be deemed to have known the nature of such drug;*
>
> …
>
> [emphasis added]

69 The important point to reiterate is that ss 18(1) and 18(2) of the Act are therefore by no means novel, having had antecedents going as far back as 1927. More importantly, as a consequence, the "popular" view to the effect that the presumptions in ss 18(1) and 18(2) of the Act were motivated by the decision in *Warner* (([30] *supra*); see also GD at [15]) is, with respect, misconceived. All these legislative antecedents, to re-emphasise an important point, *antedated* the decision in *Warner*. This is *not* to state that the *general* principles as well as approaches in *Warner* are *necessarily* irrelevant. However, it is imperative to emphasise that the first – and foremost – guidance must come from the actual language of the Act itself (and, in particular, in the context of the present proceedings, s 18(2)).

70 In this regard, in the Singapore Privy Council decision of *Ong Ah Chuan v PP* [1980-1981] SLR 48 (which was also referred to in the GD at [17]), Lord Diplock, who delivered the judgment of the Board, observed thus (at 62):

> In a crime of specific intent where the difference between it and some lesser offence is the particular purpose with which an act, in itself unlawful, was done, in their Lordships' view it borders on the fanciful to suggest that a law offends against some fundamental rule of natural justice because it provides that upon the prosecution's proving that certain acts consistent with that purpose and in themselves unlawful were done by the accused, the court shall infer that they were in fact done for that purpose unless there is evidence adduced which on the balance of probabilities suffices to displace the inference. *The purpose with which he did an act is peculiarly within the knowledge of the accused. There is nothing unfair in requiring him to satisfy the court that he did the acts for some less heinous purpose if such be the fact. Presumptions of this kind are a common feature of modern legislation concerning the possession and use of things that present danger to society like addictive drugs, explosives, arms and ammunition*. [emphasis added]

71 Lest it be thought that this is a uniquely Singaporean approach, the *same* view was also acknowledged (albeit in the context of the then UK drugs legislation) by none other than one of the most accomplished and famous common law scholars of the twentieth century – Prof A L Goodhart. In

his influential article, "Possession of Drugs and Absolute Liability" (1968) 84 LQR 382, Prof Goodhart examined the holdings and implications of *Warner* ([30] *supra*). Indeed, he described *Warner* as "probably the most interesting case in many years that has been decided on the subject of possession" (see *ibid* at 383). More importantly, the learned author referred to the rationale underlying the approach adopted by the majority in *Warner* (*ibid* at 386):

> [I]t is essential to note that if the physical possession of an unauthorised drug does not create absolute liability, then an addict or a drug pedlar may be able to persuade a jury that there was a possibility that the tablets had got into his possession by accident, or had been planted on him, or that he had been told by his supplier that they were an innocent remedy. *The inevitable result would be that the enforcement of the law would become far more difficult*. It must be remembered that vast sums of money are involved in the drug trade. It costs very little to manufacture these drugs, but the expense of getting them distributed is very large because the distributors, both the large and the small ones, are not willing to face the chance of imprisonment unless the profits they make are commensurate with the risk. *The traffickers will, therefore, take every possible step to protect their agents against a possible conviction.* Is it unreasonable in these circumstances to suggest that [the UK] Parliament did intend to provide that the physical possession of unauthorised drugs, which it is comparatively easy to prove, is absolute proof of guilt, even at the faint risk that the possessor was morally innocent, especially as evidence concerning this moral innocence could be given when the question of sentence was under consideration? Moreover, in how many instances is it likely that drugs will be planted on an innocent man? [emphasis added]

72 We have, of course, seen (at [35] above) that, *unlike* the 1964 UK Act, ss 18(1) and 18(2) do *not*, in fact, adopt an *absolute* approach. However, the policy factors enunciated by Prof Goodhart in the above quotation are no less relevant to the Singapore context – or the context of any other country for that matter in so far as this particular sphere of the law is concerned.

73 Prof Goodhart also commented on the suggestion for legislative reform by Lord Pearce (above at [40]) that would result in the statutory equivalent of ss 18(1) and 18(2) of the Act and, in particular, on one possible objection to it, as follows ([71] *supra* at 389):

> The first objection, which is a *minor* one, is that the suggested provision seems to be in conflict with the golden rule as stated in the *Woolmington* case [[1935] AC 462] that "throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt." *The answer to this objection is that no rule is so golden that there cannot be an exception to it if justice requires it*. After all, the function of the *Woolmington* rule is to protect an accused person, so that an exception to it, which may benefit him, has much to be said in its favour. [emphasis added]
>
> [Significantly, the last sentence is a reference to the mitigation of the absolute approach under the 1964 UK Act, which is, however, not present in ss 18(1) and 18(2) of the Act.]

74 It is also noteworthy that the UK Law Commission itself has considered the arguments both for as well as against having statutory presumptions in the context of the mental element in crime: see the Law Commission Report ([34] *supra*,especially at paras 79–85).

75 There has, however, been some dissatisfaction expressed with regard to the presumptions contained in the Act in general and (in the context of the present proceedings) ss 18(1) and 18(2) thereof in particular (see, for example, Michael Hor, "Misuse of Drugs and Aberrations in the Criminal Law" (2001) 13 SAcLJ 54). The general thrust of such dissatisfaction is that the concept of *mens rea*

has been undermined. In a *practical* context, it is true that the accused bears the burden of rebutting applicable presumptions under the Act. However, that is not only what the relevant provisions of the Act require. The Act is also undergirded by twin policies that are inextricably connected with each other – ensuring that the general policy of the Act is not undermined as well as simultaneously ensuring that (unlike the UK legislation at issue in *Warner* ([30] *supra*)) the concept of *mens rea* is still retained. The Act is structured in such a manner as to ensure that truly innocent persons are (in so far as the issue of possession is concerned) able to rebut the initial presumption (in s 18(1)) without any difficulties. However, this structure also ensures that accused who are truly guilty under the relevant provisions of the Act are not given *carte blanche* to deny possession by mere assertion, without more, hence undermining the general policy of the Act itself. As we shall elaborate in the conclusion to this judgment, the inimical effects that would result from a frustration of the general policy of the Act generate not only social ills and tragedy but also simultaneously violate the individual rights of those who are adversely and directly impacted by the availability (and, hence purchase as well as consumption) of controlled drugs on the open market (including, in many instances, innocent members of their respective families as well). These very important aspects have generally been downplayed by critics of the Act who, at best, mention them in passing without more – only to revert to the alleged contravention of the rights of the accused against whom (in their view) no presumptions should operate against. However, these critics never directly address the issue as to what the *reality* would be if no presumptions were in operation – a reality that even Prof Goodhart acknowledged in the UK context (see at [71] above). In any event, the courts must observe these considerations of policy enacted by the Legislature by applying the law objectively to the facts at hand. That having been said, we are of the view that these considerations of policy are not only valid and practical but also (as we have already mentioned) protect the precious *individual rights* of *others* in society. A purely theoretical discourse which tends to abstract itself from the realities and adopts a one-sided approach (which, *at bottom*, favours *only* the accused) tends to not only implode by its very abstraction but also ignores the fact that, in an imperfect and complex world, there is necessarily a whole compendium of rights, all of which must be balanced. Looked at in this light, any theoretical discourse which tends to favour only one conclusion whilst ignoring other approaches as well as considerations and (worse still) other wider consequences, gives, with respect, a distorted view (see also Chan Sek Keong, "The Criminal Process – The Singapore Model" (1996) 17 Sing L Rev 433, especially at 494–498). However, such discourse is nevertheless important as well as helpful in reminding us that *we must also never forget the rights of the accused and* that, *where the context and facts warrant it, the presumptions should be rebutted accordingly*. However, to argue that the presumptions should be jettisoned altogether just because they might (potentially) operate against an accused not only ignores the reality of things but also throws out the baby together with the bathwater. To put it simply, *all lives and rights* are precious. To this end, the Legislature has put in place a structure that *balances* the rights of accused persons on the one hand and the rights of persons in the wider society on the other.

The issue

76 Indeed, this appears to be, to the best of our knowledge, one of the very rare occasions when it has been sought to argue, in the context of s 18(2) of the Act and in the most specific of fashions, that although the accused did in fact know that he was in possession of a controlled drug, he did not know that he was in possession of the *specific* drug in question. A similar argument was made in the Singapore Court of Appeal decision of *Wong Soon Lee* ([60] *supra*). In that case, the accused stated that he did not know that the drugs he was carrying were heroin and that he had believed that they were less serious drugs for which he, if convicted, would at the most have to pay a fine only. The trial judge found, on the facts, that the accused *actually knew* that he was in possession of heroin. The Court of Appeal affirmed the trial judge's decision, but appeared to rely upon the doctrine of wilful blindness instead. Yong Pung How CJ, who delivered the grounds of

judgment of the court, observed thus (at [45]):

> Having considered all the arguments canvassed, we were unable to accept the appellant's contention that the trial judge erred in coming to the decision he came to. *First, the circumstances in which the appellant received the drugs were so suspect that any reasonable man would have gone one step further and ascertained for himself the precise nature of the drugs. This the appellant had failed to do. The only reason why he failed to do so was because he either knew the precise nature of the drugs or he did not care to know. If the appellant chose to turn a blind eye and merely relied on the assurance given by Ah Kee, he would not be able to rebut the statutory presumption of knowledge*. [emphasis added]

It is also worthy to note that, in *Wong Soon Lee*, the Court of Appeal emphasised the trial judge's findings of fact, especially with regard to the accused's credibility. This is of course an obvious point but is, more often than not, of special importance owing to the very factual nature of an accused's attempts to rebut the presumptions under the Act and, on occasion, may even be crucial (see, for example, the Singapore Court of Appeal decisions of *Lau Boon Huat v PP* [1997] 3 SLR 273 and *PP v Ko Mun Cheung* [1990] SLR 323 (affirmed in *Ko Mun Cheung v PP* [1992] 2 SLR 87 ("*Ko Mun Cheung*")). While we do not exclude the possibility that there could well be a case where an accused does not have knowledge of the nature of the drugs, we note the observations made by Yong Pung How CJ in *Wong Soon Lee* where he said thus ([60] *supra* at [48]):

> *The difficulty which the court faces in such situations is that the defence of lack of knowledge of the precise nature of the drugs is all too often raised by drug couriers.* It is very hard for the court to believe, as in this case, that the appellant had no knowledge that the drugs were heroin on the following grounds. He had agreed to deliver something which he knew were illegal drugs to someone in Singapore, he did not know the identity of the recipient, he received these drugs in a dark alley and he was promised RM$1,000.00 in return for his trouble. [emphasis added]

77 The above observations, with respect, generate some ambiguity. On one reading, the court appears to be suggesting that the argument that knowledge of the precise nature of the drugs is necessary is one that is to be frowned upon as it will be raised by accused persons both often as well as indiscriminately. However, on another reading, the court did refer to the accused's knowledge of the precise drug in the case itself (*viz*, heroin). Nevertheless this reference is not conclusive simply because, as noted above, the decision of the court in this case turned on the fact that the accused had actual knowledge that the drug was heroin in any event. Of some ambiguity, too, with respect to this particular issue is the decision of this court in *Lim Lye Huat Benny* ([54] *supra*). We note, however, that neither party to this appeal canvassed this ambiguity. However, because this ambiguity raises a *threshold interpretive issue*, we pause to deal with it before dealing with the further issue as to the type of knowledge required under s 18(2) of the Act as well as whether or not the appellant has, in the circumstances, rebutted the presumption embodied within s 18(2) itself.

78 Returning to the threshold interpretive issue that arises from a reading of s 18(2) of the Act itself, there are, in our view, at least *two* possible interpretations open to the court.

Two possible interpretations

(a) Introduction

79 As already mentioned, there are *two* possible interpretations.

80 The *first* possible interpretation is that the reference to knowledge in s 18(2) of the Act is to

knowledge that the drug concerned is a *controlled drug*.

81 The *second* is the interpretation contended for by the appellant in the present proceedings and referred to at the outset of the present part of this judgment: That the reference to knowledge in s 18(2) of the Act is to knowledge that the drug concerned is *not only* a controlled drug *but also* the *specific drug* which it turns out the accused was in possession of. It should be noted that, in the court below, this particular interpretation was assumed to be the correct one, and the Judge certainly proceeded to render his decision on this basis (see GD, especially at [36]). With respect, however, the situation (as we shall see) is not as clear-cut as the Judge assumed it to be.

82 It would be appropriate to consider the arguments both for as well as against each of these interpretations.

(b) The first interpretation

83 There are a number of arguments in favour of the first interpretation – that knowledge in s 18(2) of the Act is only a reference to knowledge that the drug concerned is a controlled drug.

84 However, looking, first, at the literal language of s 18(2) itself (reproduced above at [19] and [54]), it appears, at first blush, that the second alternative must prevail. After all, the reference in that provision is to knowledge of "the nature of that drug".

85 Let us, however, now turn to the *case law* which, as we shall see, supports the first interpretation – especially when viewed in *the context of the underlying policy of the Act itself*.

86 In this court's decision in *Fun Seong Cheng* ([52] *supra*), the following passage from Lord Pearce's judgment in *Warner* ([30] *supra* at 305) was cited (at [54]):

> One may, therefore, exclude from the 'possession' intended by the Act the physical control of articles which have been 'planted' on him without his knowledge. *But how much further is one to go? If one goes to the extreme length of requiring the prosecution to prove that 'possession' implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities* … [emphasis added]

87 The above observations by Lord Pearce, cited and adopted by this court in *Fun Seong Cheng*, clearly *exclude* the need by the prosecution to prove that the accused knew of the *precise nature* of the drug; the prosecution need only prove that the accused knew that the drug is (in the Singapore context) a controlled drug. This would, in fact, be an appropriate juncture to emphasise that this basic approach was not only embodied within the quotation above but generally within *Warner* itself – a point which emerges from our analysis of *Warner* above (at [44]–[48] and [50]). Indeed, the court in *Fun Seong Cheng* proceeded to point out ([52] *supra* at [55]) that *this* particular meaning of possession (enunciated by, *inter alia*, Lord Pearce in *Warner*) had in fact been adopted by this court as well in the earlier decision of *Tan Ah Tee* ([49] *supra*; see also the decision of this court in *Gulam bin Notan Mohd Shariff Jamalddin v PP* [1999] 2 SLR 181 at [66]). *Tan Ah Tee* is, in fact, a seminal decision where the court cited, in addition to the observations quoted above, *in extenso* from the judgment of Lord Pearce in *Warner*. As we have already emphasised (above at [50]–[52]), to the extent that the court in *Warner* was dealing with the *general concept* of *possession*, then *that* approach (*adopted*, as we have just seen, in *Tan Ah Tee* as well as other Singapore decisions) clearly supports the view that s 18(2) does *not* refer to the *specific* drug in question but, rather, simply to

controlled drugs generally. Indeed, Lord Pearce's views in *Warner* (quoted above at [48]) find a similar expression in Lord Guest's observations in the same case, as follows (([30] *supra*) at 301):

> If the correct interpretation of section 1 [of the 1964 UK Act] is that the prosecution are required to prove knowledge by the accused of the existence of the substance this will be, in my view, *a drug pedlar's charter in which a successful prosecution will be well-nigh impossible in the case of the trafficker who conceals the drugs and on questioning remains silent or at any rate refuses to disclose the origin of the drug. … If, therefore, this is not an absolute offence the prosecution will, in my view, require to establish knowledge by the accused not only of possession of the actual substance but also knowledge of the nature of the substance, namely, that it is a prohibited drug under the Act. This would, in my view, lead to wide-scale evasion of the Act.* [emphasis added]

Interestingly and perhaps even significantly, this particular approach towards the concept of possession has apparently been *retained in the UK context*, despite the presence of a quite different statutory regime to that which existed at the time *Warner* was decided: see, for example, the English Court of Appeal decisions of *McNamara* ([41] *supra*) at 251–252; *R v Gareth Edmund Lewis* (1988) 87 Cr App R 270 at 276 and *John A Leeson v R* [1999] EWCA Crim 2176 ("*Leeson*"); as well as the House of Lords decisions of *R v Boyesen* [1982] AC 768 at 773–774 and *R v Lambert* [2001] 3 WLR 206, especially at [16], [56]–[59], [61]–[71], [120]–[123] and [126] (*cf* also s 28(3)(*a*) of the 1971 UK Act itself as well as *Fortson* ([37] *supra*, especially at paras 3-67–3-76) and Robert Ribeiro & John Perry, "Possession and Section 28 of the Misuse of Drugs Act 1971" [1979] Crim LR 90, especially at 100–101).

88 To summarise the *general* point at issue here, adoption of the first interpretation is consistent with the general policy underlying the Act. In contrast, adoption of the second interpretation will tend to *undermine* the general policy of the Act. Take, for example, the facts of this very appeal. Put simply, was it the intention of the Legislature that it is sufficient if the prosecution proves that the accused knew that he was in possession of a controlled drug or must it go further and prove that the accused knew that it was a *specific* type of controlled drug (in this case, heroin)? The fact that s 18(2) of the Act is required demonstrates how difficult it is for the prosecution to prove knowledge on the part of the accused for, indeed, it is all too easy for an accused to simply assert that he or she did not know that what he or she was carrying contained a controlled drug, let alone a specific controlled drug. One approach that Parliament could have adopted to obviate this problem was to have simply made all offences under the Act *absolute* ones which did not require proof of *mens rea*. This was, according to the majority of the House in *Warner*, precisely what the *UK* Parliament did in so far as the 1964 UK Act was concerned. As we have already pointed out, the *Singapore* Parliament did *not* adopt such an *extreme* approach. However, to now interpret s 18(2) of the Act as requiring knowledge on the part of the accused of the *specific* type of controlled drug in question is, *in substance and effect*, to swing to the *other extreme*.

89 Indeed, looking closely at the various *offences* under the Act itself, it will be seen that *all* of them only refer to the offence concerned in relation to *a controlled drug*. It is of course true that, depending on the specific type of controlled drug concerned, the *punishment* (under the *Second Schedule* of the Act) would differ – and drastically at that. However, the fact that the substantive offences themselves do not make any reference to specific drugs but, rather, to controlled drugs generally supports the first interpretation (*cf* also *Leeson* ([87] *supra*), interpreting s 5(3) of the 1971 UK Act). Indeed, the strongest evidence in support of the first interpretation can be found in the general scheme of the Act itself. First, as just stated, the substantive offences under the Act do not make any reference to any specific drugs but only to "controlled drugs", with a "controlled drug" defined under s 2 of the Act to mean "any substance or product which is for the time being specified

in Parts I, II or III of the First Schedule or anything that contains any such substance or product". Second, the punishments for offences under the Act are referred to in s 33 and the Second Schedule. To ascertain the punishment for the offence committed by the accused, one looks under the first column. Then one looks across the schedule for the specific offence or type and quantity of the drug involved under the second column. The punishment for the offence committed by the accused depends in large part on whether the controlled drug has been classified as a Class A drug, Class B drug, Class C drug, or is an offence for which the punishment will vary depending on the quantity of the controlled drug with which the accused was charged. The fact that the punishment concerned would differ according to the specific type of controlled drug concerned is a logically separate issue. Indeed, it has not been argued that an offence concerning a drug which carries the death penalty (which punishment, incidentally, was introduced *after* s 18(2) had been enacted in the original Act) should be treated more leniently than the *same* offence concerning a drug which carries a less severe criminal penalty. This is plainly correct, lest inequality of treatment ensue as a result of such an approach. Is it *then* correct to argue that because there may be harsher punishments meted out under law depending on the type of controlled drug in question, an approach should be adopted towards s 18(2) of the Act which would tend to undermine the general policy of the Act itself? As we point out below (at [91]), however, the possibility of harsher punishments may, albeit in *another* sense, nevertheless be a relevant consideration and supports the second interpretation – to which our attention must now turn.

(c) The second interpretation

90 As already mentioned above, the key argument in favour of the second interpretation (that the reference to knowledge in s 18(2) of the Act is to knowledge that the drug concerned is *not only* a controlled drug *but is also* the *specific drug* which it turns out the accused was in possession of) is the *literal wording* of s 18(2) itself. However, as we have also seen, the literal wording of this provision is also (at least arguably) consistent with a *contrary* interpretation (see generally above at [83]–[89]). More importantly, we have also referred to the fact that the second interpretation would tend to *undermine* the general policy of the Act itself.

91 In summary, it would appear that there are fewer arguments that support the second interpretation. The fact that an accused charged under the Act might receive very harsh punishments is, *in and of itself*, not conclusive. However, it does not thereby follow that this particular fact is wholly irrelevant. What *is* of *direct* relevance for the purposes of the present issue is this: That where the possible punishments are harsh and may even result in the imposition of the death penalty, the fact that an *ambiguity in the statutory language* exists (thus giving rise to these two possible interpretations) does tend to suggest that the benefit of the doubt ought to be given to the accused in the light of the fact that adoption of the first interpretation would tend, on balance, to work against him or her (*cf* also GD at [37]). Indeed, the present appeal is precisely one such instance. In this regard, it is important to note that the very strict approach in *Warner*, albeit general in nature, was adopted in the context of punishments that were less harsh than those under the Act, and which certainly did not include the death penalty. In our view, this particular argument appears to be the strongest in so far as support for the second interpretation is concerned. Indeed, it might even be argued that there is no ambiguity in the statutory language and that the literal language is, instead and in addition to the argument just mentioned, the strongest argument in favour of the second interpretation. We also pause to observe that there has been, to the best of our knowledge, no local decision that has in fact adopted the first interpretation.

(d) Conclusion

92 Unfortunately, no detailed argument with respect to which of these two interpretations was

to be preferred was proffered by counsel before this court.

93 In the circumstances, we cannot – and ought not to – express a definitive conclusion. This being the case, and in fairness to the appellant, our analysis and decision will proceed on the footing that the second interpretation applies (which interpretation in fact constituted the nub of his argument before this court).

94 Indeed, it is important to note that had we accepted the first interpretation as being the conclusive one to adopt, that would, in the nature of things, have concluded the present appeal. It will be recalled that the appellant knew that he was in possession of a controlled drug, although he had argued that he did not know that it was the *precise or specific* controlled drug which he was *in fact* carrying, *viz*, heroin. Hence, since the first interpretation entails that the reference to knowledge in s 18(2) of the Act is to knowledge that the drug concerned is a *controlled drug only*, *and* the appellant in the present proceedings had *actual knowledge* that he was in possession of a *controlled drug*, his appeal would necessarily have failed if the first interpretation was adopted.

95 However, given the specific language of s 18(2) of the Act, the need (given the extreme penalties prescribed by the Act) to resolve any ambiguities in interpretation (if they exist) in favour of the accused, as well as the fact that no case has (to the best of our knowledge) adopted the first interpretation, it would appear, in our view, that (whilst not expressing a conclusive view in the absence of detailed argument) the second interpretation appears to be the more persuasive one and (as pointed out at [93] above) will in fact be adopted in the present appeal. It is, nevertheless, important to note that it would be necessary to consider the further question as to whether, on the second interpretation, the appellant in the present proceedings had knowledge that what he was in possession of was *heroin*. This raises, in turn, a further issue, which would apply *equally* to the *first* interpretation – what is *the nature of the knowledge required* under s 18(2). We turn now to consider this particular issue. However, before proceeding to do so, it should be noted that if it is actually proven, on the facts of this particular case, that the appellant had *actual* knowledge that the drugs he was carrying were *not only* controlled drugs within the meaning of the Act *but also* that they contained *heroin*, then the presumption under s 18(2) of the Act *need not even be invoked in the first instance*.

The issue of knowledge

(a) The issue stated

96 The answer to the question posed in the preceding paragraph turns on the interpretation of the meaning of the word "known" in s 18(2) of the Act. In other words, is the accused required to prove, on a balance of probabilities (see generally above at [60]), that he or she did *not* have *actual* knowledge of the nature of the drug concerned, *or* is the accused required to go *further* and prove (once again, on a balance of probabilities) that he or she did *not* have *constructive* knowledge of the nature of the drug concerned?

97 The *latter* requirement (*viz*, that of *constructive* knowledge) is *more onerous* in so far as the accused is concerned simply because the accused would have to prove that he or she not only did *not* have *actual* knowledge of the nature of the drug concerned *but also* that he or she *ought not, as a reasonable person, to have known* of the nature of the drug concerned. The Judge did *not* accept such a requirement. However, by way of a preliminary observation, we would point out that the concept of constructive knowledge ought to be clearly distinguished from the doctrine of *wilful blindness*, which is the *legal equivalent* of *actual* knowledge (*cf* also *per* Willes J in the English Court of Criminal Appeal decision of *R v William Sleep* (1861) CLC 472 at 480). Indeed, as we point out

below, the Judge himself *accepts* that wilful blindness constitutes (in the eyes of the law) *actual* knowledge as well.

98 The Judge did not, strictly speaking, need to deal with the issue set out in the preceding paragraph as he had (as already noted above) found that the appellant *possessed actual* knowledge of the drug he was transporting or was at least *wilfully blind* to the fact that he was transporting the said drug (which wilful blindness was *tantamount* to *actual* knowledge) (see, for example, GD at [55] and [65]). In the circumstances, therefore, there was no need to even invoke the presumption in s 18(2) of the Act in the first instance. To put it simply, the appellant would not even be needed to rebut the presumption that he had actual knowledge of the nature of the drug because, on the *evidence*, it was clear that he *had actual* knowledge of the nature of the drug.

99 The Judge nevertheless proceeded to consider the interpretation of s 18(2) in more *general* terms. Strictly speaking, the Judge's observations in this regard are *obiter dicta*. However, they are no less important or significant from a legal as well as a practical perspective because of this.

100 Unfortunately, although counsel for the appellant, Mr Rengarajoo, appeared (not surprisingly, perhaps) to support the Judge's (albeit *obiter*) approach, counsel for the respondent, Mr David Khoo, stated that the prosecution was not taking a definite position on this particular issue in the present appeal. However, because the issue is an extremely fundamental one which the Judge took pains to analyse as well as expound upon, it would be remiss of us if we did not consider it. We would point out, at this juncture, however, that what is often perceived to be constructive (as opposed to actual) knowledge might (as we shall see at [132] below) be *actual* knowledge that *arises from the application of the doctrine of wilful blindness* – a doctrine which the Judge himself accepts as constituting actual knowledge. Bearing this important observation in mind, we turn now to an analysis of s 18(2) of the Act in general and the knowledge required under it in particular.

(b) Analysis

101 The Judge, in commencing his analysis of the issue of knowledge in the context of s 18(2) of the Act, began by considering the famous (or infamous, depending on the perspective one takes) observations on the five levels of knowledge enunciated by Peter Gibson J (as he then was) in the English High Court decision of *Baden, Delvaux and Lecuit v Société Generale pour Favoriser le Développement du Commerce et l'Industrie en France SA* [1983] BCLC 325 ("*Baden*"), as follows (at [250]):

> What types of knowledge are relevant for the purposes of constructive trusteeship? Counsel for the plaintiff (Mr Price) submits that knowledge can comprise any one of *five different mental states* which he described as follows: (i) *actual knowledge*; (ii) *wilfully shutting one's eyes to the obvious*; (iii) *wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make*; (iv) knowledge of circumstances which would indicate the facts to an honest and reasonable man; (v) knowledge of circumstances which would put an honest and reasonable man on inquiry. More accurately, apart from actual knowledge they are formulations of the circumstances which may lead the court to impute knowledge of the facts to the alleged constructive trustee even though he lacked actual knowledge of those facts. Thus the court will treat a person as having constructive knowledge of the facts *if he wilfully shuts his eyes to the relevant facts which would be obvious if he opened his eyes, such constructive knowledge being usually termed (though by a metaphor of historical inaccuracy) 'Nelsonian knowledge'.* [emphasis added]

102 The Judge pertinently observed that the view of Peter Gibson J just quoted had been severely

criticised in the context of the law relating to constructive trusts and, indeed, had been *abandoned* in so far as the specific issue of knowing *assistance* (as opposed to knowing *receipt*) was concerned (for developments in the context of knowing *receipt*, see, for example, Jill E Martin, *Hanbury & Martin – Modern Equity* (17th Ed, Sweet & Maxwell, 2005), especially at paras 12-016–12-019 and *Hayton and Marshall – Commentary and Cases on the Law of Trusts and Equitable Remedies* (Sweet & Maxwell, 2005, 12th Ed by David Hayton & Charles Mitchell), especially at paras 11-21–11-27; *cf* also the observations in the recent House of Lords decision of *Criterion Properties plc v Statford UK Properties LLC* [2004] 1 WLR 1846). This abandonment was, in fact, effected by the Judicial Committee of the Privy Council in *Royal Brunei Airlines Sdn Bhd v Philip Tan Kok Ming* [1995] 2 AC 378 ("*Royal Brunei Airlines*") (noted by Hans Tjio, "No Stranger to Unconscionability" [2001] JBL 299; see also GD at [22]). Indeed, as we point out below, this abandonment as well as subsequent developments are not really germane to the issues before us in the present appeal. This is not unfortunate as the subsequent developments in this particular area of the law relating to constructive trusts have been, to say the least, rather complex (see, for example, the House of Lords decision in *Twinsectra Ltd v Yardley* [2002] 2 AC 164 ("*Twinsectra*") (noted by T M Yeo and H Tjio, "Knowing What Is Dishonesty" (2002) 118 LQR 502); the Privy Council decision of *Barlow Clowes International Ltd (in liquidation) v Eurotrust International Ltd* [2006] 1 All ER 333 (noted by T M Yeo, "Dishonest Assistance: a Restatement from the Privy Council (2006) 122 LQR 171); and the English High Court decisions of *Abou-Rahmah v Abacha* [2006] 1 All ER (Comm) 247 (affirmed recently by the English Court of Appeal in *Abou-Rahmah v Abacha* [2007] 1 All ER (Comm) 827) and *Attorney General of Zambia v Meer Care & Desai (a firm)* [2007] EWHC 952 (Ch)). Indeed, the entire area of law as a whole has been – and continues to be – rife with conceptual as well as practical difficulties (see, for example, the perceptive accounts in Charles Harpum, "The Stranger as Constructive Trustee (Part I)" (1986) 102 LQR 114 (Part II, dealing, in the main, with knowing receipt was published in (1986) 102 LQR 267) and Simon Gardner, "Knowing Assistance and Knowing Receipt: Taking Stock" (1996) 112 LQR 56). Significantly, though, the issue of dishonesty may be closely related to the doctrine of wilful blindness (as is evidenced from the discussion in both *Royal Brunei Airlines* as well as *Twinsectra*). The doctrine of wilful blindness is an important one in the present context and will, in fact, be dealt with in more detail below (see generally at [106]–[128]).

103 Turning, now, to the issue of *actual* knowledge, it has been described by Yong Pung How CJ, in the Singapore High Court decision of *PP v Koo Pui Fong* [1996] 2 SLR 266 ("*Koo Pui Fong*") thus (at 271, [17]):

> I think that it would be reasonable to say that a person 'knows' a certain fact if he is aware that it exists or is almost certain that it exists or will exist or occur. Thus knowledge entails a high degree of certainty.

104 The practical reality, however, is, as Yong CJ put it in *Koo Pui Fong*, that "[o]f course, we would never have the benefit of going into the mind of another person to ascertain his knowledge and in every case, knowledge is a fact that has to be inferred from the circumstances" (([103] *supra*) at 271, [17]; see also the Singapore Court of Appeal decision of *Tay Kah Tiang v PP* [2001] 2 SLR 305 ("*Tay Kah Tiang*") at [34]). Likewise, a finding of wilful blindness is "solely dependent on the relevant inferences to be drawn by the trial judge from all the facts and circumstances of the particular case, giving due weight, where necessary, to the credibility of the witnesses" (*per* Abdul Malik Ishak J in the Malaysian High Court decision of *PP v Tan Kok An* [1996] 1 MLJ 89 at 101; see also *per* Lord Esher MR in the English Court of Appeal decision of *The English and Scottish Mercantile Investment Company, Limited v Brunton* [1892] 2 QB 700 at 708 ("*Brunton*") (the relevant passage of which is quoted at [109] below)). Indeed, short of a clear admission (which will, in the nature of things, be extremely rare), inferences drawn from the precise facts and circumstances of the case concerned are the only viable material available to the court in order to ascertain whether or not

either actual knowledge or wilful blindness exists. It is, at this juncture, important to note, once again, that *wilful blindness* has always been treated, in law, as the *equivalent* of *actual* knowledge (see also *per* Yong CJ in *Koo Pui Fong*, cited at the end of this paragraph and *per* Devlin J in *Roper v Taylor's Central Garages (Exeter), Limited* [1951] 2 TLR 284 ("*Roper*") (quoted at [116] below), as well as at [123] below). This is entirely understandable as well as logical and practical simply because the court cannot read a person's mind (see *per* Yong CJ in *Koo Pui Fong*, *supra*, as well as *per* Lord Esher MR in *Brunton* at [109] below). As we have just mentioned, a clear admission is going to be extremely rare. The proof of an actual situation of actual knowledge is, in the circumstances, going to be equally rare. This is *a fortiori* the case in so far as offences under the Act are concerned. Accused persons are hardly likely to admit to possessing actual knowledge and can (indeed, will) easily disavow such knowledge even if it existed, given the surreptitious nature inherent in drug offences as well as the draconian penalties that are imposed on conviction. In any event, as we have already noted, wilful blindness has, in any event, always been treated, in law, as *actual* knowledge. In this regard, Yong CJ, in *Koo Pui Fong*, observed that the "concept of wilful blindness does not introduce a new state of mind to that of knowing" and that "[i]t is simply a reformulation of actual knowledge" ([103] *supra* at 271, [17]); the learned Chief Justice then proceeded to observe as follows (see *id*):

> It seems to me that it is wholly in keeping with common sense and the law to say that an accused knew of certain facts if he deliberately closed his eyes to the circumstances, his wilful blindness being evidence from which knowledge may be inferred. Thus I fully agree with the following passage of Lord Bridge in *Westminster City Council v Croyalgrange Ltd* (1986) 83 Cr App R 155 at p 164:
>
> … it is always open to the tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed.

105 Yong CJ did then state thus ([103] *supra* at 271, [18]):

> But this is different from saying that wilful blindness should be automatically equated with knowledge. Hence, if the respondent suspected that PW1 was an illegal immigrant but deliberately shut her eyes to the circumstances, that in itself is strictly speaking not an alternative to knowing that PW1 had entered the country illegally, although it would be fair and almost irresistible to infer that the respondent had the relevant knowledge. Despite the distinction, the practical effect it seems, would usually be the same but the difference should be borne in mind so as not to confuse the concept of wilful blindness as being a separate state of mind which is sufficient to form an alternative to the requirement of knowledge.

106 Given the practical reality that a finding of actual knowledge is likely to be rare, we turn, now to what, as we have just mentioned, is the legal equivalent of actual knowledge, *viz*, the doctrine of *wilful blindness*.

107 Various criteria have been laid down in the context of the doctrine of wilful blindness. Although many deal with cases from a commercial perspective, the *general principles* and *reasoning* stated therein are completely on point.

108 For example, Goddard J (as he then was), in the English decision of *Evans v Dell* (1937) 53 TLR 310, referred (in the context of the provisions of the UK Road Traffic Act 1930 (c 34) (as amended)) to the concept of *shutting one's eyes to the obvious* (see at 313). And, as far back as

1877, Lord Blackburn observed, in the House of Lords decision of *Jones v Gordon* (1877) 2 App Cas 616, thus (at 629):

> If he was (if I may use the phrase) honestly blundering and careless, and so took a bill of exchange or a bank-note when he ought not to have taken it, still he would be entitled to recover. *But if the facts and circumstances are such that the jury, or whoever has to try the question, came to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind – I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover – I think that is dishonesty*. [emphasis added]

109 In a similar vein, Lord Esher MR, distinguishing between the equitable doctrine of *constructive* notice on the one hand and that of *actual* knowledge on the other, observed thus in *Brunton* ([104] *supra* at 707–708):

> The doctrine of constructive notice is wholly equitable; it is not known to the common law. There is an inference of fact known to common lawyers which *comes somewhat near to it*. When a man has statements made to him, or has knowledge of facts, which do not expressly tell him of something which is against him, *and he abstains from making further inquiry because he knows what the result would be – or, as the phrase is, he "wilfully shuts his eyes" – then judges are in the habit of telling juries that they may infer that he did know what was against him. It is an inference of fact drawn because you cannot look into a man's mind, but you can infer from his conduct whether he is speaking truly or not when he says that he did not know of particular facts*. *There is no question of constructive notice or constructive knowledge involved in that inference; it is actual knowledge which is inferred.* [emphasis added]

110 Turning to more modern case law, in the English Court of Appeal decision of *Compania Maritima San Basilo S A v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1977] 1 QB 49 ("*Oceanus*"), Lord Denning MR observed (in the context of marine insurance) thus (at 68):

> To disentitle the shipowner, he must, I think, have knowledge not only of the facts constituting the unseaworthiness, but also knowledge that those facts rendered the ship unseaworthy, that is, not reasonably fit to encounter the ordinary perils of the sea. And, when I speak of knowledge, I mean *not only positive knowledge, but also the sort of knowledge expressed in the phrase "turning a blind eye". If a man, suspicious of the truth, turns a blind eye to it, and refrains from inquiry – so that he should not know it for certain – then he is to be regarded as knowing the truth. This "turning a blind eye" is far more blameworthy than mere negligence. Negligence in not knowing the truth is not equivalent to knowledge of it.* [emphasis added]

Roskill LJ (as he then was) agreed with Lord Denning MR (see *id* at 76):

> But like Lord Denning M.R., I would emphasise that knowledge does not only mean positive knowledge, but includes that type of knowledge which is expressed in the phrase "turning a blind eye". *If the facts amounting to unseaworthiness are there staring the accused in the face so that he must, had he thought of it, have realised their implication upon the seaworthiness of his ship, he cannot escape from being held privy to that unseaworthiness by blindly or blandly ignoring those facts or by refraining from asking relevant questions regarding them in the hope that by his lack of inquiry he will not know for certain that which any inquiry must have made plain beyond possibility of doubt.* [emphasis added]

And, in the same case, Geoffrey Lane LJ (as he then was) stated (*id* at 81):

> Knowledge of what? Again the subsection is clear. It says "unseaworthiness", not "facts which in the upshot prove to amount to unseaworthiness". Accordingly it seems clear to me that if this matter were res integra, the section would mean that the assured only loses his cover if he has consented to or concurred in the ship going to sea *when he knew or believed that it was in an unseaworthy condition. I add the word "believed" to cover the man who deliberately turns a blind eye to what he believes to be true in order to avoid obtaining certain knowledge of the truth.* [emphasis added]

111 An even more recent decision is that of the House of Lords in *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469 (another decision in the context of marine insurance) ("*Manifest Shipping*"). In this case, wilful blindness is succinctly encapsulated within the phrase "*blind-eye knowledge*". For example, Lord Clyde, referring to this phrase, then proceeds to elaborate thus (at [3]):

> Blind-eye knowledge in my judgment requires a conscious reason for blinding the eye. *There must be at least a suspicion of a truth about which you do not want to know and which you refuse to investigate.* [emphasis added]

112 Lord Hobhouse of Woodborough, after referring to the various views expressed in *Oceanus*, opined thus (at [25]):

> All these formulations reject the suggestion that even gross negligence will suffice. The use of the word "suspicion" and "belief" are indicative of the strength of the suspicion that is required. But perhaps the most helpful guide is to be found in what was said by Roskill LJ and Geoffrey Lane LJ about the reason for refraining from inquiry – "in the hope that by his lack of inquiry he will not know for certain" – "in order to avoid obtaining certain knowledge of the truth". It is probable that Lord Denning MR was saying the same thing when he used the phrase "so that he should not know it for certain". *The illuminating question therefore becomes "why did he not inquire?". If the judge is satisfied that it was because he did not want to know for certain, then a finding of privity should be made. If, on the other hand, he did not enquire because he was too lazy or he was grossly negligent or believed that there was nothing wrong, then privity has not been made out.* An ambiguity has arisen from the use by Roskill LJ of the phrase "had he thought of it". This suggests that the test may be objective. If so, that is not correct. The test is subjective: Did the assured have direct knowledge of the unseaworthiness or an actual state of mind which the law treats as equivalent to such knowledge? [emphasis added]

113 Lord Scott of Foscote observed thus (at [112]):

> "Blind-eye" knowledge approximates to knowledge. Nelson at the battle of Copenhagen made a deliberate decision to place the telescope to his blind eye in order to avoid seeing what he knew he would see if he placed it to his good eye. It is, I think, common ground – and if it is not, it should be – that *an imputation of blind-eye knowledge requires an amalgam of suspicion that certain facts may exist and a decision to refrain from taking any step to confirm their existence*. [emphasis added]

This is an obvious reference to what is commonly known as "Nelsonian blindness" (for further background, see Michael P Furmston, "Some Themes and Thoughts" (2005) 17 SAcLJ 141 at 145–147, where it is also suggested that the account of Nelson placing the telescope to his blind eye was an embellishment (see also *per* Peter Gibson J in *Baden* (at [101] above)). The learned law lord also

observed, a little later on in his judgment, as follows (at [116]):

> *In summary, blind-eye knowledge requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist. But a warning should be sounded. Suspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts. In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe. To allow blind-eye knowledge to be constituted by a decision not to enquire into an untargeted or speculative suspicion would be to allow negligence, albeit gross, to be the basis of a finding of privity.* That, in my opinion, is not warranted by section 39(5) [of the UK Marine Insurance Act 1906 (c 41)]. [emphasis added]

114 Indeed, the views of both Lord Hobhouse and Lord Scott in *Manifest Shipping* were expressly referred to by Lord Hoffmann in *Twinsectra* ([102] *supra* at [22]).

115 Numerous cases in the criminal sphere adopt the same principles as well (see, for example, the English Divisional Court decision of *Roper* ([104] *supra*) and the English Court of Appeal decisions of *Leslie George Griffiths* (1974) Cr App Rep 14 and *Westminster City Council v Croyalgrange Ltd* [1985] 1 All ER 740 ("*Westminster City Council*")).

116 In *Roper* ([104] *supra*), although the court arrived at its decision on a comparatively narrow ground to the effect that the court below had taken into account inadmissible evidence and that the defendants' appeal had therefore to be allowed, Devlin J (as he then was) nevertheless proceeded to make the very pertinent observations, which merit quotation in full, as follows (at 288–289):

> There are, I think, three degrees of knowledge which it may be relevant to consider in case of this kind. The *first* is *actual* knowledge, which the justices may find because they infer it from the nature of the act done, for no man can prove the state of another man' mind; and they may find it even if the defendant gives evidence to the contrary. They may say, "We do not believe him; we think that that was his state of mind." They may feel that the evidence falls short of that, and if they do they have then to consider what might be described as knowledge of the *second* degree; *whether the defendant was, as it has been called, shutting his eyes to an obvious means of knowledge*. Various expressions have been used to describe that state of mind. I do not think it necessary to look further, certainly not in cases of this type, than the phrase which Lord Hewart, C.J., used in a case under this section, *Evans v. Dell* ((1937) 53 *The Times* L.R. 310), where he said (at p. 313): "… the respondent deliberately refrained from making inquiries the results of which he might not care to have."
>
> The *third* kind of knowledge is what is generally known in the law as *constructive* knowledge: *it is what is encompassed by the words "ought to have known" in the phrase "knew or ought to have known". It does not mean actual knowledge at all*; it means that the defendant had in effect the means of knowledge. When, therefore, the case of the prosecution is that the defendant fails to make what they think were reasonable inquiries it is, I think, incumbent on them to make it plain which of the two things they are saying. *There is a vast distinction between a state of mind which consists of deliberately refraining from making inquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and prudent person would make*. If that distinction is kept well in mind I think that justices will have less difficulty than this case appears to show they have had in determining what is the true position. *The case of shutting one's eyes*

is actual knowledge in the eyes of the law; the case of merely neglecting to make inquiries is not knowledge at all – it comes within the legal conception of constructive knowledge, a conception which, generally speaking, has no place in the criminal law.

[emphasis added]

The above observations – quoted at length because, as we shall see below, of their signal importance – are instructive. Although the learned judge spoke of "three degrees of knowledge", there are, in point of fact, only *two distinct categories*, *viz*, actual knowledge and constructive knowledge, respectively. The former, however, comprises two sub-categories – first, actual knowledge in (for want of a better way of putting it) an actual sense and, secondly, actual knowledge in the form of *wilful blindness*. And, as Devlin J aptly put it, the other main category of knowledge, *viz*, constructive knowledge "has no place in the criminal law". However, as we shall see below (especially at [133]), the line between actual and constructive knowledge is not, owing to the very factual nature of the inquiry, always that clear.

117 The views of Devlin J in *Roper* (quoted in the preceding paragraph) were in fact endorsed by the English Court of Appeal in *Westminster City Council* ([115] *supra*). Robert Goff LJ (as he then was) observed thus (at 744):

It is well established that, in cases where knowledge is required, knowledge may be proved *not only* by showing *actual* knowledge, *but also* by showing that the defendant in question has *deliberately shut his eyes to obvious means of knowledge or deliberately refrained from making inquiries, the results of which he might not care to know*. We were referred, very helpfully, by counsel for the respondents to the judgment of Devlin J in *Roper v Taylor's Central Garages (Exeter) Ltd* [1951] 2 TLR 284 at 288, in which in the course of his judgment he reaffirmed that proposition, and treated deliberately shutting one's eyes to obvious means of knowledge *as being equivalent to actual knowledge*. [emphasis added]

118 More importantly, perhaps, *Roper* was also endorsed in the Singapore High Court decision of *Koo Pui Fong*, where Yong Pung How CJ observed thus (at 272, [23]):

[T]here is a vast difference between a state of mind which consists of deliberately shutting the eyes to the obvious, the result of which a person does not care to have, and a state of mind which is merely neglecting to make inquiries as a reasonable and prudent man would make. The latter, also known as constructive knowledge, is not knowledge at all: see *Roper v Taylor's Central Garages (Exeter) Ltd* [1951] 2 TLR 284 at p 289.

119 Finally, the UK Law Commission, in its working paper entitled *Codification of the Criminal Law, General Principles – The Mental Element in Crime* (Working Paper No 31, 1970), described its conception of wilful blindness in two alternatives, as follows:

KNOWLEDGE

(3)	A PERSON KNOWS OF CIRCUMSTANCES NOT ONLY WHEN HE KNOWS THEY EXIST, *BUT ALSO WHEN*
First alternative	HE HAS *NO SUBSTANTIAL DOUBT THAT THEY EXIST*.

Second alternative — HE *KNOWS THAT THEY PROBABLY EXIST.*

[emphasis added]

120 The UK Law Commission itself subsequently expressed a preference for the *first* alternative set out in the preceding paragraph in the Law Commission Report already referred to above ([34] *supra* at paras 47–49; though *cf* at [127] below).

121 The doctrine of wilful blindness is, in fact, not a novel one in the Singapore context. It has, in fact, been applied in many decisions in the context of the operation of the Act itself: see, for example, the Singapore Court of Appeal decisions of *Chan Chi Pun* ([37] *supra* at [20]); *PP v Khampali Suchart* [1996] SGCA 38 ("*Khampali Suchart*"); *Chou Kooi Pang* ([37] *supra* at [20]); *Wong Soon Lee* ([60] *supra* at [45]; see also above at [76]); *Zulfikar bin Mustaffah v PP* [2001] 1 SLR 633; *Yeoh Aik Wei v PP* ([60] *supra*); and *Tay Kah Tiang* ([104] *supra* at [34], although it was in fact proved that the accused had actual knowledge in any event); the Malaysian Court of Appeal decision of *Roslan bin Sabu @ Omar v Pendakwa Raya* [2006] 4 AMR 772; the Singapore High Court decisions of *Koo Pui Fong* ([104] *supra*); *PP v Mohamed Faizi bin Abdul Rahim* [1998] SGHC 335 (affirmed in *Mohamed Faizi bin Abdul Rahim v PP* [1999] SGCA 14); the Malaysian High Court decision of *PP v Tan Kok An* ([104] *supra* at 100–101); as well as the Singapore District Court decision of *PP v Tseng Yue-Wey* [2003] SGDC 288 at [32]. Indeed, even where the doctrine is not expressly referred to, it is clear that it has, in substance, been applied: see, for example, the Singapore Court of Appeal decisions of *Kong Weng Chong v PP* [1994] 1 SLR 34 ("*Kong Weng Chong*"); *Ubaka v PP* [1995] 1 SLR 267; *Lee Yuan Kwang v PP* [1995] 2 SLR 349 ("*Lee Yuan Kwang*"); *Cheng Heng Lee* ([37] *supra*); and *Abdul Rau'uf* ([60] *supra*); as well as the Singapore High Court decision of *Ko Mun Cheung* ([76] *supra*)). The doctrine of wilful blindness was also emphasised by Yong Pung How CJ in the Singapore Court of Appeal decision of *PP v Hla Win* [1995] 2 SLR 424. Although the learned Chief Justice dissented in that case, this was due to a difference in view from the majority *vis-à-vis* the facts of that particular case. Indeed, this difference in view only serves to underscore the point (made below, especially at [123] and [125]) that *the precise factual matrix* is of the first importance. In that particular case, the majority of the court in fact found that the accused had managed to *rebut* the statutory presumptions (reference may also be made to *Khampali Suchart* (*supra*), where the accused was held *not* to have been wilfully blind to the contents of the bag concerned).

122 It is appropriate at this point to draw the various threads with respect to the doctrine of wilful blindness together. Indeed, specific central principles, in our view, emerge from the relevant case law, as follows.

123 The first is that wilful blindness is treated, in law, as being the *equivalent* of *actual* knowledge (see above at [106] as well as *Koo Pui Fong* (see at [104] above); *Roper* (see at [116] above); *Leslie George Griffiths* ([115] *supra* at 18); and *Westminster City Council* ([115] *supra* at 744)). Indeed, we are of the view that, given that both actual knowledge as well as wilful blindness are, more often than not, inferred from the facts and circumstances of the case, the line, in *practice*, between the two is a fine one and may, on occasion at least, even be blurred. However, it bears repeating that wilful blindness is *not opposed* to actual knowledge. Indeed, the suggestion that this was the case at the trial court stage in *Tochi* ([35] *supra*) was swiftly rejected by the Court of Appeal. Choo Han Teck J, who delivered the judgment of the court, observed thus (at [6]):

> The presumption of knowledge was therefore not rebutted, and all that remained was to determine whether the act of importing the drugs was proved. However, a statement in the trial

judge's grounds requires clarification. At para 48, the trial judge stated, in what appeared to us as an emphasis to his rejection of the first appellant's evidence:

> I found he had wilfully turned a blind eye on the contents of the capsules because he was tempted by the US$2000, which was a large sum to him. … Consequently, even if he may not have actual knowledge that he was carrying diamorphine, *his ignorance did not exculpate him* … [emphasis added].

That passage creates an impression that there is a legal duty not to "turn a blind eye". It would thus create a wrong assumption that there was some sort of positive legal duty, meaning that the first appellant was bound in law to inspect and determine what he was carrying, and that consequentially, if he did not do so, he would be found liable *on account of that failure or omission*. ***The Act does not prescribe any such duty. All that the Act does (under s 18), is to provide the presumptions of possession and knowledge, and thus the duty of rebutting the presumptions lay with the accused. There could be various reasons why a court might not believe the accused person, or find that he had not rebutted the presumptions. The fact that he made no attempt to check what he was carrying could be one such reason. Whether the court would believe a denial of knowledge of the articles in the accused person's possession (made with or without explanation or reasons) would depend on the circumstances of the individual case.*** The trial judge then referred to *Yeo Choon Huat v* PP [1998] 1 SLR 217 at [22]:

> [I]gnorance is a defence only when there is no reason for suspicion and no right and opportunity of examination …

The above passage, however, was from the judgment in *Ubaka v PP* [1995] 1 SLR 267 and cited with approval by both the minority judgment in *PP v Hla Win* [1995] 2 SLR 424, as well as in the unanimous judgment in *Yeo Choon Huat v PP*. It is also pertinent that the same coram sat in both cases (*Yeo Choon Huat v PP* and *PP v Hla Win*). ***It will be gleaned from these cases that the true principle is that, ultimately, a failure to inspect may strongly disincline a court from believing an "absence of knowledge" defence. Therefore, to say, as in this case, that the first appellant thought it was chocolates was another way of saying he did not know that he was carrying drugs. Given the evidence, including the evidence that the first appellant did not inspect the articles when he could have done so (the turning of the blind eye), the court was entitled to find that the presumption had not been rebutted.***

[emphasis added in bold italics]

124 What is clear from the above observations is that the accused is under no legal obligation not to turn a blind eye. However, if he does in fact turn a blind eye, that could, on the facts, be taken to be wilful blindness on his part. If so, this would be tantamount to actual knowledge in law, and the accused would have failed to have rebutted the presumption of knowledge under s 18(2) of the Act. The above observations are important inasmuch as they clarify what might otherwise have been a misunderstanding of some observations expressed at first instance in *Tochi*. In particular, in *PP v Iwuchukwu Amara Tochi* [2005] SGHC 233, the learned trial judge had held (at [42]) that there had been "no *direct* evidence that [the first accused] knew the capsules contained diamorphine" [emphasis added]. Reading this observation in context, it was clear that the learned trial judge had made a finding that the first accused did *not* possess *actual* knowledge that he was in possession of the drug concerned. However, it was crystal clear that he had nevertheless found that the first accused had what is, in law, the equivalent of actual knowledge as he (the first accused) had clearly been guilty of wilful blindness on the objective facts before the court; as the learned trial judge

observed (at [48]):

> I found that he [the first accused] had *wilfully turned a blind eye* on the contents of the capsules because he was tempted by the US$2000, which was a large sum to him. When Smith, who had befriended him and had appeared to help him get out of Pakistan, also offered him the US$2000, he did not want to ask any questions or check the capsules himself. Consequently, even if he may not have actual knowledge that he was carrying diamorphine, his ignorance did not exculpate him because it is well established that:
>
> > [I]gnorance is a defence only when there is no reason for suspicion and no right and opportunity of examination …
>
> – *Yeo Choon Huat v PP* [1998] 1 SLR 217at [22] and his defence cannot stand. He was therefore found guilty and convicted on the charge he faced.
>
> [emphasis added]

125 The second central principle is that *suspicion is* legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding *and* the accused deliberately decides to turn a blind eye. *However*, that suspicion must, as Lord Scott perceptively points out in *Manifest Shipping* (see at [113] above), "be firmly grounded and targeted on specific facts". Mere "untargeted or speculative suspicion" is insufficient (see also Hor ([75] *supra*) at 73). A decision in this last-mentioned instance not to make further inquiries is, as the learned law lord correctly points out, tantamount to negligence, perhaps even gross negligence, and is as such insufficient to constitute a basis for a finding of wilful blindness. As Lord Scott aptly put it (see at [113] above), "[s]uspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts". It is important to note that the (unacceptable) negligence which the Judge referred to in the court below relates to the *level* of *suspicion* required before a decision not to make further inquiries will be considered to constitute wilful blindness. It is equally – if not more – important to emphasise that the Judge was therefore *not* stating that suspicion *per se* would not be sufficient to ground a finding of wilful blindness. On the contrary, *suspicion is a central as well as integral part of the entire doctrine of wilful blindness*. However, the caveat is that a *low level* of suspicion premised on a factual matrix that would *not* lead a person to make further inquiries would be insufficient to ground a finding of wilful blindness where the person concerned did not in fact make further inquiries. What is of vital significance, in our view, is the substance of the matter which (in turn) depends heavily upon the *precise facts* before the court. It is equally important to note that in order for wilful blindness to be established, the appropriate level of suspicion (as just discussed) is a necessary, but not sufficient, condition, inasmuch as that level of suspicion *must then lead to a refusal to investigate further*, thus resulting in "blind eye knowledge" (see also the second quotation from the article by Wasik & Thompson at [127] below).

126 That having been said, the requirement of *suspicion* is nevertheless a vital (and, indeed, threshold) one. So, for example, if the accused makes merely token inquiries because he suspects that making more substantive inquiries might lead him to the truth which he does not want to know, that is wilful blindness. If the factual matrix was such that the accused ought to have been suspicious, the court must then consider the accused's reasons for not making further inquiries. We will come to this point below but it suffices to state at this juncture that a court would be well justified in thinking that the reason why an accused refused to make further inquiries may be because he or she was virtually certain that if further inquiries were made, his or her suspicions would be confirmed. In such a situation, the level of suspicion is, in fact, quite the opposite of the very first

scenario referred to (in the preceding paragraph), and is one where a person in the accused's shoes ought to make further inquiries and the failure to do so would therefore constitute wilful blindness. As already emphasised above, what is token and what is substantive (*in so far as the making of further inquiries* is concerned) is, of course, a matter of fact (and see at [129]–[132] below for brief discussions as well as corresponding analyses). The propositions canvassed in the present paragraph are of fundamental importance and will (as we shall see) figure prominently in the analysis of the factual matrix in the present proceedings in so far as the doctrine of wilful blindness is concerned.

127 We would venture to state a third central principle. Whilst Prof Glanville Williams has correctly drawn a clear distinction between wilful blindness on the one hand and recklessness on the other (see Glanville Williams, *Textbook of Criminal Law* (Stevens & Sons, 2nd Ed, 1983) at pp 125–126), this distinction must be properly understood in its proper context. To elaborate, it is clear that wilful blindness, being (as we have seen) the equivalent of actual knowledge, is distinct from recklessness which, theoretically at least, falls short of actual knowledge. Indeed, wilful blindness necessarily entails an element of *deliberate* action inasmuch as to the extent that the person concerned has *a clear suspicion* that something is amiss but then embarks on a deliberate decision not to make further inquiries in order to avoid confirming what the actual situation is, such a decision is necessarily a *deliberate* one. Looked at in this light, wilful blindness and recklessness are, *ex hypothesi*, incompatible with each other. It is imperative, in order to avoid any unnecessary confusion, that we emphasise, once again, that wilful blindness is a combination of suspicion *coupled with* a *deliberate* decision not to make further inquiries, whereas the recklessness that has been referred to by Prof Williams refers to recklessness in terms of the accused's conduct in the context of circumstances *which would not otherwise have aroused suspicion* on the part of the accused. We think that it is important to reiterate this point because it is possible, on another interpretation, to argue that the decision by the accused not to make further inquiries when faced with suspicious circumstances may be characterised as reckless conduct. We do *not* agree with such an argument and characterisation. Such conduct is wilful blindness that entails a *deliberate* decision not to make further inquiries when faced with suspicious circumstances. Semantical confusion *must* be avoided, especially when an accused's life or liberty is at stake. Indeed, as Prof Williams himself put it (again in his textbook, *supra*, at p 125)*:*

> [The doctrine of wilful blindness] is meant to deal with those whose philosophy is: "Where ignorance is bliss, 'tis folly to be wise." To argue away inconvenient truths is a human failing. If a person *deliberately* "shuts his eyes" to the obvious, because he "doesn't want to know", he is taken to know. [emphasis added]

The following observations in a leading article are also pertinent (see M Wasik & M P Thompson, ""Turning A Blind Eye" as Constituting Mens Rea" (1981) 32 NILQ 328 at 330–331):

> "[W]ilful blindness is more than non-coincidence: it is the construction of a greater mental element than *D* [the accused] actually had, by virtue of *D's* own *fault* in closing his eyes. The fault which is seen to justify this is provided by *D's advertence* to the particular fact, prior to his *deliberately* turning a blind eye. It would seem that strict subjective principles of criminal liability are modified, though not overridden, in the case of liability imposed for wilful blindness. [emphasis in original]

And, even more to the point, the same writers observe thus (*id* at 335):

> It may well be the case that whilst "suspicion" alone is not strong enough to found liability, suspicion plus *deliberately* refraining from finding out the truth will be enough, or ought to be enough, because of *D*'s fault in turning a blind eye. [emphasis added]

In this regard, the following observation by Stephenson LJ in the English Court of Appeal decision of *Keith Ian Thomas, Peter William Thomson* (1976) Cr App Rep 65 at 69 is also helpful:

> Suspicion is not knowledge, but knowledge may be inferred from shutting one's eyes to suspicious circumstances …

Finally, it is important to note that the judgment in the court below is, in large part, consistent with the propositions just made. For example, the passage the Judge cites (see GD at [24]) from Prof Andrew Ashworth's book, *Principles of Criminal Law* (Oxford University Press, 3rd Ed, 1999) at pp 196–197, when read closely, confirms the central importance of the concept of suspicion. It is also interesting to note that where the phrase "virtual certainty" is used, it is in fact an *alternative* instance of the *highest possible* form of suspicion; indeed, this particular alternative, in our view, borders on – if not actually epitomises – *actual* knowledge rather than wilful blindness (see also, especially, *per* Yong CJ in *Koo Pui Fong*, set out at [103] above; and *cf* at [119]–[120] above). At this point, the distinction between actual knowledge (in its purest form) and wilful blindness would (unjustifiably, wrongfully, and in substance) be erased. In the same vein, the reference by Prof Williams in his work to the phrase "virtual certainty" (also cited by the Judge in GD at [25]) should be given the same meaning. As just mentioned, any other interpretation would be to equate, in effect, actual knowledge (in its purest form) with wilful blindness. Although the latter is the legal equivalent of the former, they are, as we have seen in the analysis above, *not* identical concepts. The Judge also cites (see GD at [26]) Prof Hor's views ([37] *supra*), but to the extent that the learned author *eschews* the concept of suspicion in the context of wilful blindness *altogether*, that view is, with respect, erroneous (a similar comment may be made of the passage cited by the Judge in his GD at [29]). The preferable view, however, is to interpret the passage cited as referring to various *levels* of suspicion (as to which see above at [125]).

128 Finally, a fourth central principle is that whether or not a presumption (here, of knowledge) under the Act is *rebutted* (on a balance of probabilities (see above at [60])) depends, in the final analysis, on *the precise factual matrix* concerned. As Choo Han Teck J put it in *Tochi* ([35] *supra* at [9]):

> Rebutting the statutory presumption is a matter of fact, and is no different from any other fact-finding exercise save that the law requires that a person rebutting a statutory presumption does so on a balance of probabilities. It is not sufficient for him merely to raise a reasonable doubt.

Reference may also be made to *Koo Pui Fong* ([103] *supra*, especially at [25]).

129 Indeed, in the context of the doctrine of wilful blindness, while some illustrations may be helpful, it is nevertheless imperative to note that, owing to the intensely factual nature of the inquiry, they cannot be representative, let alone comprehensive. Generally speaking, if an accused has had his or her suspicions aroused in the manner set out at [125] above, the accused can still rebut the relevant presumption under s 18 of the Act by demonstrating that he or she took reasonable steps to investigate by making further inquiries that were appropriate to the circumstances. What these circumstances will be will obviously vary from case to case, thus underscoring (once again) the intensely factual nature of the entire process. Nevertheless, one obvious situation is where the accused takes no steps whatsoever to investigate his or her suspicions. The court would naturally find that there was wilful blindness in such a situation. Where, for example, an accused is given a wrapped package and is told that it contains counterfeit currency when it actually contains controlled drugs, we would have thought that, absent unusual circumstances, the accused should at least ask to *actually view* what is in the package. Even a query by the accused coupled with a false assurance would, in our view, be generally insufficient to obviate a finding of wilful blindness on the part of the

accused under such circumstances. Indeed, if an accused is told that the package contains counterfeit currency and the package is then opened to reveal that it contains packets of what are obviously drugs, that ought then to prompt the accused to make further inquiries. And, where, in fact, only token efforts are made to investigate one's suspicions, this would be insufficient. But might it not be argued that the accused in the example just given (relating to a wrapped packaged) has done all that could reasonably have been done to investigate further? Much will, of course, depend on the precise facts before the court but it would appear, in principle, that merely asking and receiving answers in situations such as that presently considered would be insufficient simply because the accused concerned would certainly be given false answers and assurances. Further, denials of knowledge by the accused are also to be expected and must, in the circumstances, be (in the words of the Judge in the court below) "scrupulously analysed and warily assessed for consistency and credibility" (see GD at [11]). As the Judge aptly put it (see *ibid*):

> It is only too easy to disingenuously claim "I did not know". Associated with the plea of "I did not know" are often belated claims of "I did not inspect" or "I was told it was something else". These pleas are more often than not flimsy fabrications of last resort without an atom of credibility.

However, to the extent that the Judge later suggests that it would be wrong to convict accused persons *solely* on the basis that they had failed to make proper inquiries (see GD at [27]), we would respectfully disagree with such a suggestion. His analysis to the effect that such an approach would equate wilful blindness with mere negligence or recklessness fails, with respect, to recognise that a key threshold element in the doctrine of wilful blindness itself is that of suspicion followed by (and coupled with) a deliberate decision not to make further investigations. To be sure, and as we have emphasised above, the level of suspicion ought to be properly grounded (see above at [125]), this being an intensely factual issue (see also the acknowledgment by the Judge of the importance of this last-mentioned point in GD at [31]). Wilful blindness *cannot* be equated with virtual certainty for, as already explained above, this would be to equate wilful blindness with actual knowledge in its purest form. The result would be to erase the doctrine of wilful blindness from the legal landscape altogether. That this is not what the Judge intended is evident, for example, from the following observation where he maintains the distinction between actual knowledge in its purest form on the one hand and wilful blindness on the other (see GD at [28]; see also GD at [30]):

> [T]he failure to inspect or inquire is relevant and pertinent only where, together with the ambient circumstances of the case, they go towards establishing *either* that the accused *knew* what he was carrying *or* was *wilfully blind* to the obvious. [emphasis added]

130 Situations such as that which exists on the facts of the present appeal underscore this point since the accused already knows that he or she is carrying controlled drugs and surely cannot rely *merely* on the fact that he or she had asked for assurances that the controlled drugs concerned were not of a nature which carried the death penalty. If the accused chooses to take an enormous (indeed, deadly) risk and proceed without establishing the true nature of the drugs he or she is carrying, that constitutes, in our view, wilful blindness. To say that this is unfair to the accused concerned is rather disingenuous, particularly in light of the fact that the countenancing of false answers and assurances would be precisely to constitute a drug pedlar's charter, for accused persons who are willing to risk imprisonment but not death (see also the observations of Lord Guest in *Warner* (at [87] above)) – thus undermining (in a crucial manner) the policy of the Act itself. It is also clear that the accused has a real choice to decide not to proceed if satisfactory answers are not forthcoming, especially where liberty or even life is at stake. Indeed, the Judge himself also observed, in a similar vein, thus (GD at [65]):

> Tan [the appellant] is not a hapless victim caught in the web of inevitable circumstances beyond

> his control. He had real choices. While life may not have been kind to him, he was under no compulsion to risk his life by committing an illicit act for meagre returns. He has consciously chosen to run the legal gauntlet and to leave everything to chance. Given the concatenation of circumstances, Tan's plaintive plea that "I am just unlucky as this was my first time doing it and I was caught" is a tragic but futile one.

We pause to observe, however, that if the *first* interpretation *vis-à-vis* s 18(2) of the Act is adopted (see [80] above), the accused would not be able to make such arguments in the first instance – at least on facts such as those which obtain in the present appeal since, as noted above (at [94]), the accused would *know* that he or she was in possession of a controlled drug in the first instance. Indeed, even absent actual knowledge such as was possessed by the appellant in the present case, in situations where the accused is carrying packets of powder and/or tablets, the possibility of those packets being controlled drugs is strong. Whether or not the accused is guilty of wilful blindness would of course depend on the precise facts and circumstances (these would include, for example, the quantity and weight of the packets, as well as whether or not the accused was remunerated for carrying the packets, although obviously no one factor would usually be conclusive).

131 We also observe that much often turns on the *credibility* of the witnesses (in particular, the accused), as was the situation in the present appeal. For example, the accused might claim to have made inquiries but this might be disbelieved by the court. Such a finding might well be determinative of the case itself. The Judge in the court below says as much; in his words (see GD at [36]):

> The plain words of s 18(2) of the MDA states that it is for an accused to prove that he did not know the nature *of the drug*. That an accused knows he is carrying *a* drug is only one aspect of the issue; he can still be exonerated if he can show that he did not know its nature. As such, it is still conceivably open to an accused carrying a drug to assert that he did not know that he was carrying the particular type of drug which was in fact found on him. *His credibility alone forms the crux of the matter in such cases*. [emphasis in original]

The last sentence in the above quotation was emphasised in italics by the Judge himself. It suggests that the credibility of the accused – and *that alone* – should be the legal lodestar in situations such as that which obtains in the present appeal (where the only issue is whether or not the accused knew the *specific* nature of the controlled drug in question). *However*, the Judge does then proceed to suggest that the entire process of inquiry is, in the final analysis, a *factual* one (see GD at [37]). This last-mentioned proposition appears to be the more reasonable approach to adopt although, as we have observed above, the *credibility* of the accused will often be an extremely important – and, on occasion, vital – factor.

132 However, as we have emphasised, the possible factual scenarios are far too many to admit of blanket propositions and, hence, the decision of the court in a given case will have to depend on the precise facts, the evidence adduced as well as the credibility of the witnesses themselves (not least the accused) (this was also, as we have seen in the preceding paragraph, the apparent position ultimately adopted by the Judge in the court below). To reiterate an obvious (but important) example, where the accused has had the controlled drugs slipped into a bag without his or her knowledge, it is clear that no offence under the Act would have been committed (see, once again, the passage by Lord Parker CJ in *Lockyer v Gibb* (set out at [35] above) as well as the GD at [12]). Where, to take another example, the accused is asked by a close family member to carry a box containing controlled drugs on the understanding that the box (wrapped up, say, in ribbons) contains a cake which is to be delivered to another close relative, there might be a strong case for arguing that the accused could not be said to be wilfully blind because the circumstances ought not to have aroused his or her suspicions, let alone entailed further investigation. Again, however, much would (to reiterate an

extremely important point) depend on the precise facts, evidence as well as credibility of the witnesses (especially the accused).

133 Given our views on actual knowledge as well as wilful blindness (which is, in law, a form of actual knowledge), it is unnecessary, in our view, to consider other forms of knowledge. In particular, and here we agree with the Judge, it is *inappropriate* to include *constructive* knowledge as falling within the ambit of s 18(2) of the Act. However, given the objective approach that this (indeed, any) court must adopt *as well as* the very factual nature of the inquiry itself, we should emphasise that *there might be occasions when the line between actual and constructive knowledge might be blurred* (this may particularly be the case in so far as (in the nature of things) the application of the doctrine of wilful blindness is concerned). Indeed, as Scott LJ (as he then was) perceptively observed in the English Court of Appeal decision of *Polly Peck International plc v Nadir (No 2)* [1992] 4 All ER 769 (at 777):

> The various categories of mental state identified in *Baden*'s case are not rigid categories with clear and precise boundaries. *One category may merge imperceptibly into another.* [emphasis added]

134 Nevertheless we accept that there is – and ought to be – a distinction, in principle, between actual knowledge on the one hand and constructive knowledge on the other. Looked at in this light, it would, in our view, conduce towards clarity to consider the views on the various types of knowledge considered in *Baden* ([101] *supra*). This is not, we hasten to add, due to the fact that the concept of knowledge was displaced by that of dishonesty in the context of the doctrine of knowing assistance *vis-à-vis* constructive trusts (as noted briefly above at [102]; *cf*, though, Tjio ([102] *supra* at 303) on the irreducible role of knowledge even in the context of the ascertainment of dishonesty). The fact of the matter is that the views on the various types of knowledge in *Baden* could nevertheless still furnish guidance from the perspective of *general principle*. However, that having been said, we are of the view, with respect, that the views expressed in *Baden* do not really assist since, in our view, the doctrine of constructive notice ought not to be imported, as it were, into s 18(2) of the Act. In the circumstances, therefore, that part of Peter Gibson J's judgment in *Baden* dealing with constructive notice is really irrelevant to the present appeal. The only relevant part of that judgment pertains to actual knowledge. This would include the first three categories enunciated by Peter Gibson J (see [101] above, and *per* Knox J in the English High Court decision of *Cowan de Groot Properties Ltd v Eagle Trust plc* [1991] BCLC 1045 at 1103). Even so, it might be argued that the *third* category falls outside the ambit of the doctrine of wilful blindness, and this appears to be the view adopted by Peter Gibson J himself in *Baden* ([101] *supra* at [253]). However, it must be borne in mind that the learned judge was utilising the terminology concerned in the context of constructive trusts instead of with an eye towards (as is the situation here) the criminal law in general and the Act in particular. To this end, one will notice, for example (at [101] above), that the learned judge *equates* the doctrine of *wilful blindness* with *constructive* knowledge. However, as we have already pointed out above, the doctrine of wilful blindness, far from being a form of constructive knowledge, is (in law) a form of *actual* knowledge. This slight confusion in terminology might also, with respect, have influenced Peter Gibson J's own characterisation of the third category of knowledge in *Baden*. In any event, we are of the view that there is no difference in substance between the second and third categories of knowledge in *Baden* and would respectfully disagree with Peter Gibson J to the extent that he suggests otherwise (see also M J Brindle and R J A Hooley, "Does Constructive Knowledge Make a Constructive Trustee?" (1987) 61 ALJ 281 at 289). Indeed, as the two writers aptly observe, "[u]nder category (3), … [n]egligence is not sufficient" and … "[a]ctual or 'Nelsonian' knowledge must be shown" (see Brindle & Hooley, *supra*, at 290).

135 In the light of the difficulties generated by an interpretation of *Baden* as set out briefly in the

preceding paragraph, the more helpful precedent, in our view, is the decision in *Roper* ([104] *supra*), where a clear and practical distinction is drawn (as we have seen) between actual knowledge on the one hand and constructive knowledge on the other – with the former encompassing the doctrine of wilful blindness as well (see generally above at [116]). This is, of course, consistent with the view of actual knowledge which we have adopted in the present judgment. However, such an approach would appear to be at variance with that adopted by the Singapore High Court in *PP v Teo Ai Nee* [1995] 2 SLR 69 at 83–84, [38]–[39], where Peter Gibson J's views in *Baden* (at [101] above) were preferred to those of Devlin J in *Roper* (see at [116] above). It should, nevertheless, be noted that Yong Pung How CJ did, in *PP v Teo Ai Nee*, acknowledge that that particular case related to the Copyright Act (Cap 63, 1988 Rev Ed, and presently Cap 63, 2006 Rev Ed) ("the Copyright Act") which (in turn) concerned both civil and criminal provisions, instead of merely criminal provisions which was the situation in both *Roper* as well as in the present appeal. That is one salient point of distinction. Another – and perhaps more important – point of distinction relates to the fact that the provisions concerned (*viz*, ss 136(1)(*b*) and 136(2)(*a*) of the Copyright Act) contain the phrase "which he knows, *or ought reasonably to know*" [emphasis added], thus *clearly (and expressly) importing* (*unlike* s 18(2) of the Act) the concept of *constructive* knowledge into those particular provisions (see also GD at [23]). Further, Yong CJ was only of the view (at 84, [39]) that "Peter Gibson J's views *might* be preferred to Devlin J's observations" [emphasis added]. However, to the extent the learned Chief Justice was of the view that categories two to five in *Baden* (see at [101] above) were more appropriately characterised as instances of *constructive* knowledge, we must, with the greatest of respect, beg to differ for the reasons set out above (at [134]).

Conclusion

136 At this particular juncture, a *summary* of the applicable principles of law would be appropriate.

1 3 7 *First*, although the statutory contexts under *Warner* ([30] *supra*) and under the Act are different, the explication by the House of Lords in *Warner* of the *general* concept of *possession* (which was adopted locally in *Tan Ah Tee* ([49] *supra*) and a myriad of other Singapore decisions) is helpful and, in fact, supports the first interpretation of s 18(2) of the Act to the effect that knowledge in s 18(2) is a reference to knowledge that the drug concerned is a controlled drug.

1 3 8 *Secondly*, there is a second interpretation which states that the reference to knowledge in s 18(2) is *not only* to a controlled drug *but also* to the *specific drug* which it turns out the accused is in possession of. The strongest arguments for this second interpretation are as follows. First, there is the literal language of that provision. Secondly, because of the possibility of harsh punishments (including the death penalty) being imposed, even if it is argued that an ambiguity in the statutory language exists, the fact of such ambiguity suggests that the benefit of the doubt ought to be given to the accused. However, although the second interpretation appears to us to be more persuasive, we express no conclusive view in this particular appeal simply because this particular issue was not argued fully before us.

1 3 9 *Thirdly*, whilst the concept of knowledge in s 18(2) of the Act entails *actual* knowledge, the doctrine of *wilful blindness* should also be emphasised and is also included within the concept of knowledge in s 18(2) simply because wilful blindness is the *legal equivalent* of *actual* knowledge. However, the reference, particularly in the court below, to the various *theoretical* degrees of knowledge is, in our view, unhelpful and might even have an *adverse* impact in the sphere of *practical* application. This brings us to a closely related point.

140 In so far as the doctrine of *wilful blindness* is concerned, the evidence required to be adduced

by the accused to rebut the presumption of knowledge of the nature of the controlled drug under s 18(2) of the Act is by no means a mere formality, even though the standard required is the civil standard (of proof on a balance of probabilities). Such an approach is not only just and fair but is also consistent with the underlying policy of the Act itself. However, we have also demonstrated that in situations where the accused truly does not know the nature of the controlled drug in his or her possession, it is clear that the accused *will* be able to rebut the presumption of knowledge of the nature of the controlled drug under s 18(2) on a balance of probabilities. This will be the situation where, for example, the controlled drugs in question were slipped into a package the accused was carrying without his or her knowledge (see also above at [35] and [132]), or where the accused is otherwise devoid of actual knowledge and finds himself or herself in a situation in which the facts and circumstances do *not* give rise to that level of suspicion that would entail further investigation lest a finding of wilful blindness results. All this, again, is consistent with the underlying policy of the Act.

141 *Fourthly*, therefore (and still on the issue of knowledge in s 18(2) of the Act), whilst *general* regard ought to be had to the concept of *actual* knowledge (*including* the doctrine of *wilful blindness*), the *main* focus ought always to be on the *specific or particular factual matrix* in the case at hand. The principal difficulty lies in the attempt to divine a universal legal norm to *comprehensively* govern what is essentially and, at bottom, a *factual* inquiry. This is not to state that, in certain areas of the law, such an approach is inappropriate. *However*, in a situation such as the present, such an approach is less than satisfactory simply because the *focus* is *primarily factual and (more importantly) the permutations of the factual matrices are too numerous, varied and complex* to admit of a perfect legal solution. It is, of course, axiomatic that a universal legal norm *is* necessary. What, however, should be eschewed is the attempt to formulate a universal legal norm that purports to *comprehensively* govern the various (and variegated) fact situations. This leads, as we shall see, to *excessive refinements and fine distinctions that hinder (rather than facilitate) the task at hand*. Indeed, that s 18(2) of the Act is formulated at a fairly high level of generality is an acknowledgment of the danger just mentioned. In the circumstances, the *universal* norm with respect to knowledge in s 18(2) is that it would encompass *actual* knowledge in both its purest form *as well as* in the form of *wilful blindness* and would apply to the *specific factual matrix* concerned – with the focus being, in the nature of things, on the *latter*.

142 Having set out the relevant legal principles, we now turn to apply, in the context of the present appeal, these principles to what we have just emphasised is the most important aspect of cases of this nature – *the factual matrix*.

Our decision

Introduction

143 The principal grounds of appeal centred on the various statements made as well as (in the main) how these statements impacted on the state of knowledge of the appellant in so far as s 18(2) of the Act was concerned.

The statements made by the appellant to Constable Phua and SI Ong

144 Counsel for the appellant, Mr Rengarajoo, argued that the statements reproduced above at [12] and [15] were in fact exculpatory in nature and that that was the reason why the appellant did not challenge them. It bears repeating that although these statements were not reduced into writing, they were adduced in evidence as part of the conversations between the appellant on the one hand and Constable Phua and SI Ong, respectively, on the other, and which (in turn) were subject to cross-examination.

145 The Judge in fact held that the procedural challenge tendered by the appellant in so far as these statements were concerned was a mere afterthought (see GD at [46]). Indeed, we note that the Judge had the opportunity of assessing the credibility of the respective witnesses and there is no reason why his finding in this regard should be overturned. We turn now to consider the other substantive arguments that were made in the present appeal.

146 The issue that arose both in the court below as well as in the present appeal centred on the legal effect of these statements.

147 It will be recalled that the statements contained references by the appellant to the contents as "number 3". Nevertheless, Mr Rengarajoo's argument was that the reference was not to "heroin number 3" but, rather, simply to "number 3".

148 The Judge held, in fact, that the appellant, by "[intimating] unequivocally time and again that he knew that the drugs were called 'number 3' … knew full well that he was carrying heroin and his statements indicating that the drugs were 'number 3' were not, by any stretch of the imagination, benign references to the numerical digit three" (see GD at [52]).

149 It is also clear from the relevant testimony in the court below that "number 3" is in fact a reference, in street talk or parlance, to heroin of a particular grade. The evidence revealed (and the Judge in fact so found) that there was, in this context, neither a grade 1 or 2, although there might be a grade 4. Indeed, the Judge himself was at pains to clarify the significance of the phrase "number 3", particularly as it is understood in its *context* (see GD at [51]).

The following clarification from SI Ong is also instructive:[note: 11]

> Court: Let me clarify the point once again for you and then you can decide. Among drug users in Singapore or among those who traffic drugs, when they use the word "number 3", does that mean "heroin"?
>
> Witness: *Yes*.
>
> Court: And nothing else? No, "number 3" means "heroin"; it doesn't mean any other drug?
>
> Witness: *That is so*.
>
> [emphasis added]

Further, whilst such clarification was also sought by the Judge of Insp Teng, it is of equal importance in relation to the *general* point now being considered in relation to Constable Phua's and SI Ong's oral statements. In particular, Insp Teng clarified that there were different grades of heroin in the (Singapore) market and that, as noted in the exchange below, "number 3 is one of the grades";[note: 12] and in response to a question from the court as to what the other grades of heroin were, the following exchange is instructive:[note: 13]

> Court: Can I just clarify something with you, Insp Teng?
>
> Witness: Yes, your Honour.
>
> Court: He [the appellant] used the word, as you said, "*peh hoon sar tong*[sic]", right?

Witness: "*Peh hoon sar ho*".

Court: "*Sar ho*". Now, what does "*sar ho*" mean? Because if "*peh hoon*" already means heroin, why the "*sar ho*"?

Witness: Your Honour, because there's different grading of heroin in the market, so you got different grading, so ***number 3 is one of the grades***.

Court: What are the other grades?

Witness: ***The common*** [*sic*] ***in Singapore*** would be grade number 4 *and* ***grade number 3***.

Court: And there's grade 1 and 2 as well?

Witness: Not--I haven't encountered them, your Honour.

…

Court: And when you use these different grades like number 3 or number 4, other than heroin, would you use the grades in relation to other types of drugs like opium or cannabis or *ganja*?

Witness: ***Your Honour, from what I know, there's no grading for cannabis or ketamine, that sort of drugs***.

Court: Right. So do you use--***the word "number 3" in isolation***, what would that ***mean to you***?

Witness: ***If it is just a "number 3" without anything, then*** [*sic*] ***doesn't mean anything to me***.

Court: Suppose someone were to point a packet of powder, yellow or white, and say this is number 3, would that have any significance?

Witness: Your Honour, I would then clarify with him, "What do you mean by number 3?" Because number 3 doesn't really mean anything.

Court: ***But heroin is the only drug used on the streets which has a number attached to it to signify purity?***

Witness: ***This is from my limited knowledge, your Honour***.

[emphasis added in bold italics]

In a similar vein, the following responses from ASP Herman (during examination-in-chief by the prosecution counsel) are also instructive: [note: 14]

Q: Now, witness, how long have you been with the Central Narcotics Bureau?

A: Your Honour, I have been with CNB for 8 years.

Q: Now, based on your knowledge of the drug scene in Singapore, can you tell the Court what are the types of heroin that are commonly available in Singapore?

A: Your Honour, the local addicts abuse heroin number 3, what we call heroin number 3 in Singapore.

Court: Sorry? The local---

Witness: Heroin number 3, they call it "number 3".

Court: No, what did you say before that? Local addicts?

Witness: They consume heroin number 3.

Court: Do you know why it's called "heroin number 3"?

Witness: No, Sir.

Q: Besides heroin number 3, are there any other kinds of heroin that you have come across or that are in circulation in Singapore?

A: I have not seen heroin number 4 in circulation in Singapore but I have been involved in operation where heroin number 4 was seized. This is a purer form of heroin than heroin number 3.

Q: And, witness, are there heroin number 1 and number 2 as far as you know?

A: As far as I know, I have not come across number 1 and number 2, your Honour.

[emphasis added]

150 The following observations by the then Minister for Home Affairs and Education, Mr Chua Sian Chin, during the Second Reading of the Misuse of Drugs (Amendment) Bill are also relevant (see *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at col 1383):

> *The heroin that is commonly used by drug abusers and addicts in Singapore is referred to as Heroin No. 3.* This is currently sold in little plastic phials, at $32 per phial. It is usually mixed with other substances in the proportions of about 40% pure heroin and 60% adulterants. Each phial contains about 0.8 grammes of the mixed substance. Therefore, a person will only be in danger of receiving the death penalty if he has in his possession some 37.5 grammes of adulterated heroin which contains 40% of pure heroin. This works out to 47 phials. And it costs about $1,500 to buy this amount at the current retail price. [emphasis added]

151 The issue that now arises is whether or not the Judge was correct in holding that the appellant had clearly understood that "number 3" was the street name for heroin and that, in the circumstances, therefore, the appellant knew that he was carrying heroin. In our view, the fact that it is objectively the case that "number 3" is the street name for heroin does not *necessarily* conclude the matter in favour of the respondent inasmuch as we are concerned here with the appellant's subjective knowledge, albeit assessed on an objective basis. The relevant facts before us reveal that while it is acknowledged that the appellant is not a known drug abuser or addict, he must be taken to have some knowledge of drugs, given the circumstances surrounding the manner in which he came into possession of the drugs in the context of the present appeal, which have been set out at the commencement of this judgment.

152 Mr Rengarajoo did, however, also argue that SI Ong did not ask the appellant whether he

knew he was carrying heroin or if he knew that "number 3" was in fact heroin. With respect, we do not find this argument persuasive. There was no duty on the part of SI Ong to ask these questions . As we observed in the preceding paragraph, an objective approach has to be adopted.

153 In this regard, and returning to the issue posed at [151] above, we note, first, that the appellant is not (as we have noted (again, at [151] above)) a known drug abuser. However, it was clear (as we have also noted) that he had some knowledge of controlled drugs. We note, in particular, his claim that he had only intended to carry ecstasy (which offence does not carry the death penalty). Nevertheless, we were of the view that to then conclude that the appellant must have known the much more specific proposition to the effect that "number 3" *alone* was the street name for heroin was not *clearly* warranted on the facts, bearing in mind the fact that the criminal standard of proof entails proof beyond a reasonable doubt. Although we were initially inclined towards accepting the Judge's analysis (see at [148] above) to the effect that the appellant, by intimating time and again that he knew that the drugs he was carrying were called "number 3" and that, consequently, he knew full well that he was carrying heroin, it was not entirely clear that, notwithstanding the fact that most persons in the drug trade would probably know that "number 3" *alone* is the street name for heroin, this would also be general knowledge for persons in the *appellant's* shoes. We therefore, albeit with some reluctance, find in favour of the appellant on this particular point. We say "with some reluctance" because it was clear, as we have already noted, that the appellant was no babe in the woods, having, *inter alia*, some knowledge of drugs and having in fact sought out the opportunity to transport drugs (albeit, as claimed by the appellant himself, not those which carried the death penalty).

154 However, this does not mean that the appellant did not need to take further steps in the context of the doctrine of *wilful blindness* – a point which we deal with below (at [156]).

155 Returning, however, to the issue of *actual* knowledge (as opposed to its other legal variant in the form of the doctrine of wilful blindness), it was, in our view and for the reasons given above (especially at [153]), *not* clear, based *only* on the appellant's own oral statements to both Constable Phua and SI Ong, that he in fact knew that "number 3" *alone* referred, in effect, to "*heroin* number 3". *However*, we must emphasise that this particular conclusion is based *only* on these oral statements. As we shall see below (especially at [158] and [171]), when these statements are read *together with the written statement recorded by Insp Teng*, the conclusion is the *exact opposite* (*ie*, that the appellant *did* have *actual* knowledge that the drugs he was carrying consisted of heroin).

156 Furthermore, even on our finding that the appellant did not have actual knowledge that the drugs he was carrying consisted of heroin (based, it should be emphasised, *solely* on the appellant's statements to Constable Phua and SI Ong), this is not the end of the matter, simply because there could be *wilful blindness* instead (which is the legal equivalent of actual knowledge (see at [123] above)). It is clear, on the evidence, that the appellant *clearly suspected* that the drugs he was carrying were heroin. It was for this reason that the appellant did not pursue the matter further with Uncle, lest he (Uncle) confirm beyond peradventure that the drugs (which were said to be "number 3") were in fact heroin. It will be recalled that the appellant stated that Uncle had merely held up three fingers in response to his question as to what the packets he (the appellant) was being strapped with contained (see at [7] above). It will also be recalled that when the appellant then told Uncle that it was "a lot", Uncle disagreed and used his fingers to indicate seven. Even at this juncture, it will be noticed that there is a discrepancy in the appellant's own evidence as to what transpired between him and Uncle. It is clear that the appellant was attributing the quantitative element to the numbers which Uncle had indicated (here "three" and "seven", respectively) (see also GD at [52]). However, it is equally clear that given the discrepancy in Uncle's response within that brief moment, it was not reasonable to attribute the quantitative element to both his answers, as the

appellant claimed. It is a reasonable inference, in our view, that the second response ("seven") was quantitative in nature, whereas the first ("three") was qualitative in nature inasmuch as it referred to the specific type as well as grade of the drug itself (here, "heroin number three"). Be that as it may, even if we assume an ambiguity, that ambiguity cried out for clarification. Yet, the appellant, according to his own testimony, did not follow-up with Uncle in this regard. Indeed, given (according to the appellant's own evidence) Uncle's extreme reluctance to elucidate the matter (which even bordered on caginess), a person in the appellant's shoes would have had his or her suspicions aroused as it was clear that something was certainly amiss. This was a clear situation where following-up was not only desirable, but absolutely imperative, especially given the possible – and ultimate – sanction of the death penalty. Indeed, if satisfactory answers were not forthcoming from Uncle, a person in the appellant's shoes still had the choice to abandon the deal they had altogether. However, it is unnecessary for us to even go so far. It is clear, as we have already noted, that the appellant did not follow-up with Uncle at all. Hence, even according the appellant's evidence the broadest latitude, it is clear that, *at the very least*, the appellant was guilty of *wilful blindness*: He had deliberately refrained from making further inquiries and, hence turned a blind eye to what he believed to be the truth in order to avoid obtaining certain knowledge of that truth (that the drugs were such as would attract the death penalty).

157 Our view on this issue is also buttressed by the findings by the Judge in the court below. In this regard, the Judge observed thus (see GD at [55]):

> Even if I was wrong to hold that Tan knew (and/or has failed to disprove that he knew) that he was importing heroin, I was persuaded that he had been wilfully blind to the obvious fact that he was carrying heroin. The picture portrayed by the evidence is that of a man desperately in need of money. He approached, without instigation or encouragement, his friend to ask for *lobangs* in the drug trafficking business. He claims to have asked only to be involved in the trafficking of Ecstasy within Malaysia; but this alone inherently demonstrates both knowledge of the assortment of drugs available and of the potential severity of punishment for smuggling drugs into Singapore. Yet, despite his professed willingness to traffic only drugs that would attract a lower sentence, he did not flinch when Uncle purportedly responded by holding up three fingers when he asked what drugs he was carrying. It may be reasonably inferred from the fact that he was prepared to traffic Ecstasy that he knew what Ecstasy looked like. Moreover, he admitted during cross-examination that he read the newspapers regularly enough to know that trafficking heroin attracted the death penalty. Tan must have known that the yellowish powder could not have been Ecstasy; he even accepted it was "number 3". That Tan did not press on with his inquiry concerning the nature of the drug even while he asked a barrage of other questions regarding how he was going to carry so many packets of drugs, whether he looked too bulky because of the drugs, and where he was supposed to deliver them to, *inter alia*, shows that if he did not already know that he was carrying heroin, he was virtually certain that it was heroin but wilfully chose to turn a blind eye. This is not a case of a trafficker recklessly or negligently relying on an assurance that the drugs were not serious; Uncle had given what Tan himself understood as an *affirmative* indication that the drugs were "number 3" drugs. The inexorable inferences from all these facts is that Tan must have known clearly, or else, at the very least, chose to be wilfully blind to the fact that he was importing heroin. [emphasis in original]

We would only disagree with one particular aspect of the above observations: That the appellant was "virtually certain" that the drugs concerned were heroin "but wilfully chose to turn a blind eye". As we have explained in some detail above (at [127] and [129]), whilst the highest level of suspicion would result in "virtual certainty", this particular level of suspicion is *not* required before the doctrine of wilful blindness can be triggered. Whilst much would turn on the precise facts before the court, one must – and this cannot be emphasised enough – *not* equate virtual certainty (which is either, or at

least borders on, actual knowledge in its purest form (see also *per* Yong CJ in *Koo Pui Fong*, set out at [103] above)) with that of the level of suspicion that is a threshold element under the doctrine of wilful blindness.

158 However, it is important, at this juncture, to emphasise once again that we have hitherto considered *only* the statements made by the appellant to Constable Phua and SI Ong (see also at [155] above). Whilst, as we have seen, these statements *themselves* demonstrate *wilful blindness* on the part of the appellant, it is equally important to note that these statements must also be read *in context*. In particular, they were *not the only* statements made by the appellant. To this end, they must be read together with the written statement recorded by Insp Teng. Indeed, as we shall see, this particular written statement *itself* demonstrates that the appellant had *actual* knowledge that the drugs he was carrying consisted of heroin. This finding also throws light, simultaneously, on the statements made by the appellant to Constable Phua and SI Ong inasmuch as it clearly demonstrates that the appellant *knew* that "number 3" was in fact heroin.

To *summarise*, the statements made by the appellant to Constable Phua and SI Ong were sufficient to establish *wilful blindness* on the part of the appellant (which is the *legal equivalent of actual knowledge* on his part that the drugs he was carrying consisted of heroin). *In any event*, we shall see that the written statement recorded by Insp Teng demonstrates *actual* knowledge on the part of the appellant that the drugs he was carrying consisted of heroin and simultaneously demonstrates that the reference by the appellant in his statements to Constable Phua and SI Ong to "number 3" was, in fact, a reference to "*heroin* number 3". In the circumstances, it is of the first importance to turn now to the written statement recorded by Insp Teng.

The written statement recorded by Insp Teng

159 Mr Rengarajoo argued that the appellant never said (contrary to Insp Teng's testimony at the trial itself) the words "*peh hoon*" to Insp Teng. Mr Rengarajoo stated that all that the appellant had stated to Insp Teng were the words "number three powder", which was consistent with what he had said earlier to Constable Phua and SI Ong. In other words, Mr Regarajoo argued that it was *Insp Teng*, and not the appellant, who had translated, used and recorded the word "heroin" in the appellant's statement.

160 We are unable to accept the appellant's version as set out in the preceding paragraph.

161 Indeed, the Judge held, in fact, that the appellant's suggestion to the effect that Insp Teng had put the (additional) word "heroin" in the appellant's mouth was both "belated" and "entirely improbable" (see GD at [48]). The Judge further held that from the testimony given by the appellant at the trial, the statement concerned had been accurately explained by Insp Teng to him (the appellant) (see *ibid*). The Judge had also held that the appellant's own testimony further demonstrated that he had not unequivocally denied knowledge of what he was carrying and that he had not claimed that Insp Teng had used the word "heroin" in any of his (Insp Teng's) questions (see *ibid*). On the contrary, the Judge found that the appellant had acknowledged that Insp Teng had read the statement back to him and, in the statement, the appellant had admitted that the drugs were "heroin number 3" and, yet, he had voluntarily signed this particular statement (see *ibid*). Further, the appellant "was no simpleton" and "had passed his "O" level exams, even managing a pass mark for English" (see *ibid*). The Judge, in fact, held that this particular statement "[amounted] to a conclusive statement [by the appellant] that he knew he was carrying heroin" (see GD at [53]).

162 Mr Rengarajoo argued before us that the Judge had erred in making the above findings. With respect, we are unable to agree.

163 There was clearly a dispute at trial with respect to what the appellant had said to Insp Teng. It was one witness's word against the other's. It naturally follows, therefore, that the *credibility* of the respective witnesses would play a crucial role as to which version the Judge ultimately believed. And the Judge in fact held that he had "found Insp Teng, who gave his evidence in a direct and forthright manner, a credible witness" and accepted "his testimony that he had not suggested the Hokkien equivalent of heroin when he recorded Tan's responses to his initial queries" (GD at [49]). We reiterate the point made earlier in this judgment (at [22]) that an appellate court would, in such circumstances, be slow to interfere with the findings of the trial judge.

164 However, in attacking the findings on this particular issue before us, Mr Rengarajoo argued that the Judge had not first resolved the issue as to whether the appellant had indeed said the word "*peh hoon*" and that unless this issue was resolved, the Judge could not have then proceeded to find that Insp Teng had accurately translated and explained to the appellant that "*peh hoon*" meant "heroin". Such an argument is, in substance, an attack on a finding of fact by the trial judge which (once again) centred heavily on the credibility of the respective witnesses. Having looked closely at the available evidence as well as at the transcript of proceedings, we are of the view, with respect, that Mr Rengarajoo has not demonstrated why this particular finding by the Judge (that the appellant *had* said the word "*peh hoon*" to Insp Teng) was in error. It is also significant, in our view, that "*peh hoon*" is a Hokkien term and that the appellant in fact chose to render his statement to Insp Teng in Hokkien (indeed, this is not surprising as the appellant had himself admitted, under cross-examination, that he understood Hokkien well[note: 15]). Further, although this particular statement[note: 16] was recorded in English, it was subsequently read over and explained to the appellant in Hokkien before the appellant himself signed it (declining the invitation to make any amendment to it). We also note this statement was made only approximately two hours after the appellant's arrest at the Woodlands checkpoint.

165 Mr Rengarajoo nevertheless had yet another string to his legal bow: He argued that "*peh hoon*" (which, as we have pointed out above, is a Hokkien word) did *not* mean heroin. He referred to the observation of Yong Pung How CJ in the Singapore decision of *Lee Yuan Kwang* ([121] *supra* at 354, [7]), where the learned Chief Justice had indicated that "*peh hoon*" meant "drugs" in Hokkien. With respect, however, this particular observation should not be taken out of context. Indeed, the court in that case was *not* (unlike the court in the present appeal) dealing with the *specific* meaning of "*peh hoon*" as such.

166 More importantly, the following exchange between Mr Rengarajoo and Insp Teng during the former's cross-examination of the latter at the trial is instructive:[note: 17]

> Q: Witness, the word "*peh hoon*" means, you heard, it is "white powder", right? It's white powder; that's the literal meaning of "*peh hoon*". "*Peh*" means white, I think, "*hoon*" is powder, right? Now, why didn't you put it as "white powder"?
>
> A: Your Honour, *because "peh hoon" is* ***a street language that everyone knows that it stands for "heroin", your Honour****.*
>
> [emphasis added in bold italics]

167 Insp Teng's response as reproduced above is significant. It re-emphasises the obvious and commonsensical point that any words uttered by the appellant must be construed in *context*. Mr Rengarajoo was correct in pointing out that, in a *literal* translation from Hokkien to English, the phrase "*peh hoon*" means "white powder". However, such a *literal* translation obscures the *true meaning* of this phrase which can only be derived from the *context* in which such a phrase is used. It

is clear, from the context, that the phrase "*peh hoon*" was simply the *Hokkien* term for *heroin*. This is a radically different situation from one where the phrase "number 3" is involved as (unlike the phrase "number 3") the phrase "*peh hoon*" clearly has currency of meaning in the broader societal context. Further, as the respondent correctly pointed out, the appellant speaks Hokkien and had, in fact, used this very term (*viz*, "*peh hoon*") in his statement recorded pursuant to s 122(6) of the CPC, when referring to the knowledge of the taxi driver (which statement is considered below at [175]).

168 Mr Rengarajoo also attempted to argue that the phrase "*peh hoon*" merely meant illegal drugs in powdery form. Again, we find such an argument to be too vague and general. The meaning of the phrase "*peh hoon*" had to be ascertained against the backdrop of the *specific context* and that this (in turn) entailed looking at what was commonly understood as "*peh hoon*". Further, when the phrases are taken together (*viz*, "*peh hoon sar ho*"), it is clear that, viewed in *context*, the reference was clearly to *heroin*.

169 Mr Rengarajoo also argued that even if the appellant had made this statement recorded by Insp Teng (in particular that part containing the sentence, "I believed it is heroin number 3.") this was because, by the time he met Insp Teng, he (the appellant) had already known the nature of the drugs from observing what the officers had said. More specifically, Mr Rengarajoo argued that when the appellant signed this particular statement, the appellant was, in all probability, under the misguided impression that the statement was meant to reflect his knowledge at the point in time when he signed the statement and not at the point in time when he had agreed to bring the drugs into Singapore – by which time the appellant had, as just mentioned, knowledge of the drugs from observing what the officers had said. With respect, we find this argument wholly unpersuasive. If the situation had been as the appellant had maintained it was, he ought *not* to have signed the statement and ought, instead, to have *protested*. This would have been the natural course of action for the appellant to have adopted.

170 Mr Rengarajoo also argued that Insp Teng did not ask the appellant whether he knew he was carrying heroin or if he knew "number 3" was in fact heroin. With respect, we see no reason why Insp Teng should have adopted this course of action, especially in the light of our findings which have just been set out above.

171 In the circumstances, it is clear, based on this particular written statement recorded by Insp Teng (and even if we do not take into account any other statement made by the appellant), that the appellant had *actual* knowledge that the drugs he was carrying consisted of heroin. It also follows, as we have pointed out at [158] above, that when the appellant referred to "number 3" in his statements to Constable Phua and SI Ong, this was in fact a reference to "*heroin* number 3". Indeed, given our finding that the appellant had *actual* knowledge that the drugs he was carrying consisted of heroin, there is in fact *no need* for this court to rely on the *presumption* under s 18(2) of the Act (set out at [19] and [54] above). As we have observed earlier in this judgment, the appellant would not even be required to rebut the presumption that he had actual knowledge of the nature of the drug because, on the *evidence*, it was clear that he *had actual* knowledge of the nature of the drug (see above at [98]).

The written statements recorded by ASP Herman

172 The written statements recorded by ASP Herman comprised, first, a statement recorded pursuant to s 122(6) of the CPC, as well as three other statements recorded on other separate occasions (as noted above at [17]). Once again, we note that the appellant gave the statements in Hokkien and that, whilst the statements were recorded in English, they were each read over and explained to him in Hokkien before he signed them (after declining the invitations, each time, to make

any amendments to them) (see also at [164] above).

173 The Judge held – correctly, in our view – that in none of the statements referred to in the preceding paragraph did the appellant state the critical fact that he did not know what he was carrying (see GD at [54]). On the contrary, the appellant stated, instead, that the taxi driver did not know about the "*peh hoon*" (see also the next paragraph).[note: 18] The Judge held – again, correctly, in our view – that, in those circumstances, the appellant had thereby implicitly affirmed his knowledge that the drugs were indeed heroin (see GD at [54]). We also agree with the Judge's conclusion that the appellant's argument that he understood "*peh hoon*" to mean "white powder" (instead of heroin) to be contrived (see *ibid*). Indeed, the Judge found that, at the trial itself, the appellant had *conceded* that he "roughly knew" that "*peh hoon*" was a reference (in Hokkien) to *heroin* (see GD *ibid*). In the appellant's own words:[note: 19]

> I roughly knew about it but I did not understand it fully.

174 Once again, the Judge's assessment of the credibility of the various witnesses (in particular, the appellant) is of obvious importance.

175 Mr Rengarajoo argued, in particular, that the Judge had erred in holding that the appellant should have stated that he was innocent in the long statement recorded by ASP Herman when the appellant had never been asked what "number 3" was or whether he was importing heroin. Likewise, Mr Rengarajoo argued that the Judge had erred in holding that the appellant should have stated in his statements that he was ignorant of the precise nature of the drugs when the appellant had never been asked what "number 3" was at all material times and that the appellant could not be faulted for merely narrating what Uncle had told him (*viz*, "number 3"). With respect, we find no merit in these arguments. Given the immense gravity of the offence (which the appellant clearly knew about by the time the relevant statements were made by him to ASP Herman), any person in the appellant's shoes would have stated that he or she was innocent and that he or she did not know the precise nature of the drugs (see also *Yeoh Aik Wei v PP* ([60] *supra* at [13]). On the contrary, as the Judge himself observed, the appellant was, instead, at pains to exculpate the taxi driver instead. Indeed, in the only words uttered in his statement made under s 122(6) of the CPC,[note: 20] the appellant said:

> The driver does not know anything about the pei hoon.

In a similar vein, in his further statement recorded on 22 August 2005,[note: 21] the appellant stated thus:

> I wish to say that this is the first time I saw the taxi driver. He is not related to this case. He was just earning some money to drive me around as a pirate taxi driver.

And in a yet further statement recorded on 25 August 2005,[note: 22] the appellant said:

> From my conversation with Ah Beng the taxi driver, I discern that he was just operating an unlicensed taxi business and he was just trying to earn a living. There is no reason for him to pick me up if he knows I am carrying drugs.

While the appellant did claim that he had wanted to "end the matter fast" as the taxi driver had been grumbling that he had been dragged into the entire matter by the appellant,[note: 23] this still did not explain why the appellant did not also seek to exculpate himself after he knew he was being charged for an offence relating to heroin and which carried the death penalty. Indeed, in his evidence at trial, he said that if he had known that it was heroin, he would definitely have run away.[note: 24]

The appellant did also claim that he was very tired[note: 25] but, again, given the gravity of the situation, no reasonable explanation was given by him as to why he had said nothing to exculpate himself. All this is, at the very least, consistent with the appellant having actual knowledge that the drugs he was carrying consisted of heroin.

Conclusion

176 We find that, on the objective evidence before us, it is clear beyond a reasonable doubt that the appellant not only knew that he was carrying controlled drugs but also that he had *actual* knowledge that those controlled drugs he was carrying consisted of heroin. We should add that the appellant's argument to the effect that he had been paid a pittance was neither here nor there. Indeed, his acceptance of the sum offered to him merely underscored the fact (which the appellant himself admitted) that he (the appellant) was in dire and desperate financial straits. Such an action is also consistent with the appellant's professed ignorance of the respective values of the various controlled drugs. These points were, in fact, also noted by the Judge (GD at [59]); in addition, the Judge also noted (correctly, in our view) the fact "[t]hat the first – and only – mention of a fee surfaced while Uncle was strapping the drugs unto [the appellant] signifies that there was no genuine attempt whatsoever to negotiate a fee for transporting the drugs" (see GD at [60]). The following further general observations by the Judge are also, in our view, apposite (see *ibid*):

> In the absence of other compelling evidence (such as a course of negotiation, or a custom dictating a certain price for certain drugs), the price at which a courier is willing to traffic drugs is rarely (if ever) a barometer to signal that the courier did not know the nature of the drugs he was trafficking.

Conclusion

177 The underlying policy of the Act has already been dealt with in some detail above. As we have seen, this policy has (naturally) shaped this court's interpretation of s 18(2) of the Act. A *coda* might, at this juncture, be appropriate in order to correct the popular – yet wholly erroneous and simplistic – perception that somehow individual rights have (in the light of the Act) somehow gone by the board.

178 It should be noted that the Act itself is only one method (albeit a very major one) of dealing with the problem of drug abuse. As the Minister of Law, Prof S Jayakumar, put it during the Second Reading of the Bill which was ultimately passed as the Misuse of Drugs (Amendment) Act 1998 (No of 1998) (see *Singapore Parliamentary Debates, Official Report* (1 June 1998) vol 69 at col 47):

> The overall drug situation may be under control today, but we must never rest on our laurels. However, *in addition to* tough laws and strict enforcement, I wish to assure Members [of Parliament] that my Ministry would continue to focus on preventive drug education, treatment, rehabilitation and aftercare of recovering addicts who are amenable to change. Only adopting a comprehensive approach towards drugs would we eradicate the drug problem in Singapore. [emphasis added]

179 More importantly, whilst safeguarding the rights of the accused according to law is vital, it must not be forgotten that that it is equally vital to safeguard the rights of persons in the wider community whose lives would be ruined if controlled drugs such as those involved in the present proceedings had found their way into their hands (see also generally above at [27]–[28]). Indeed, the potentially horrendous consequences in the present context were noted by the Judge himself (see GD at [65]):

> The quantum of heroin involved in hardly insubstantial. With *a street value of some $900,000* it carries with it the potential to ruin many lives and to cause incalculable pain and misery to the wider community. [emphasis added]

180 And it is not only the lives of drug abusers and consumers which would be ruined. The social cost arising from the profoundly deleterious effects that would inevitably permeate the lives of their respective families must also be taken into account (and are also embodied in the Judge's observations above).

181 The sharp dichotomy often drawn between individual rights on the one hand and majoritarian goals on the other (often encompassed within the rubric of "the public interest") is, in this particular context at least, a fallacy. The public interest is not, as we have just seen, a mere abstract or theoretical concept. In this particular context, it encompasses a situation where drugs impact (in the most adverse manner possible) actual lives in real space and time – with (in many instances) equally adverse consequences for the future as well. The *individual* lives of affected members of the public are, indeed, *very real*. *These* persons possess *individual rights* that are safeguarded by the provisions of the Act (see also at [75] above). We must never lose sight of this reality.

182 Looked at from another perspective, the present proceedings also deal with the *appellant's* legal responsibility for his actions under the relevant provisions of the Act. As has been noted by the Judge, it is tragic that the appellant's dire financial straits drove him – in part, probably in large part – to do what he did. However, each individual must take legal responsibility for his or her own actions. Unpleasant and painful though it is, this court has no choice but to decide on the issue of the appellant's legal liability according to the law as applied to the relevant facts of the case itself. We had no choice but to find, on the evidence, that the appellant knew or was at least wilfully blind to the fact that he was transporting heroin. He had therefore not succeeded in rebutting the presumption (under s 18(2) of the Act) that he knew the nature of the drug concerned. Indeed, there was no need to invoke this presumption in the first instance. The respondent has, in the circumstances, proven its case against the appellant beyond a reasonable doubt.

183 In the premises, we dismissed the appeal.

[note: 1] PS 8.

[note: 2] *Record of Proceedings* vol 1 pp 33-34.

[note: 3] *Record of Proceedings* vol 3 p 39.

[note: 4] *Record of Proceedings* vol 3 p 39.

[note: 5] PS 14.

[note: 6] *Record of Proceedings* vol 1 pp 59-60.

[note: 7] *Record of Proceedings* vol 3 pp 41 – 43.

[note: 8] *Record of Proceedings* vol 3 pp 45 – 50.

[note: 9] *Record of Proceedings* vol 3 pp 51 – 55.

[note: 10] *Record of Proceedings* vol 3 p 56.

[note: 11] *Record of Proceedings* vol 1 p 64.

[note: 12] *Record of Proceedings* vol 1 p 97.

[note: 13] *Record of Proceedings* vol 1 pp 97–98.

[note: 14] *Record of Proceedings* vol 1 p 139.

[note: 15] *Record of Proceedings* vol 2 p 199.

[note: 16] See P37.

[note: 17] *Record of Proceedings* vol 1 p 95.

[note: 18] See P60.

[note: 19] *Record of Proceedings* vol 2 p 221.

[note: 20] See P60.

[note: 21] See P63.

[note: 22] See P64.

[note: 23] *Record of Proceedings* vol 2 p 194.

[note: 24] *Record of Proceedings* vol 2 p 218.

[note: 25] *Record of Proceedings* vol 2 pp 185, 195 and 227.