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in the last two  
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## CHAPTER 12

### STATUTORY INTERPRETATION

By GOH Yihan\*

#### I. Introduction

- 12.1 The importance of statutory interpretation cannot be overstated. While Singapore is a common law system, its laws also comprise statutes, which number well into the hundreds. Each statute must be interpreted and then applied to the case at hand. The theory and practice of interpreting statutes is the law of statutory interpretation, which is the concern of the present Chapter. The interpretation of statutes was deemed so important that the Singapore Parliament enacted statutory provisions more than twenty years ago that the courts should prefer an interpretation that would promote the purpose or object underlying any statute. That same statute also contained guidance on when extrinsic materials may be referred to in ascertaining the meaning of a statutory provision, as well as the type of materials that may be considered in such circumstances.
- 12.2 More than twenty years on from such statutory reform, this Chapter provides a consolidation of the law on statutory interpretation in Singapore. Insofar as statutory interpretation is concerned, this Chapter focuses on three broad questions: what is the interpretative approach used to interpret statutes, when can extrinsic materials be used in the interpretative exercise, and what type of extrinsic materials may be used? Over and above statutory interpretation, this Chapter will also briefly examine the applicable principles to the interpretation of other legal documents, such as constitutions and contracts. It proposes that a broad principle unites the interpretation of legal documents generally. It will be evident from

\* I am grateful to Leung Liwen for his able research assistance. All errors remain my own.

examining these principles that the topic of statutory interpretation concerns different fields of law, inasmuch as there are statutory provisions dealing with many fields of law. While some attempt will be made at exploring the relevant fields of law so as to shed light on the relevant principles of statutory interpretation, it should be mentioned that this Chapter is primarily concerned about general principles, not specific examples of law arising from different statutes.<sup>1</sup>

- 12.3 In an age of increasing legislation and written commercial documents, it can be said that the interpretation of legal documents now forms and, if not the most, important part of the legal process. It is hoped that the account provided in this Chapter will be of interest to the particular issue of statutory interpretation in Singapore and, more generally, to the universal and enduring problem of the proper approach towards statutory interpretation.

## **II. Background to statutory interpretation in Singapore**

### **A. Statutory reform via the Interpretation (Amendment) Act 1993**

- 12.4 Before discussing the present developments relating to statutory interpretation in Singapore, it will be helpful to first summarise the circumstances under which the 1993 statutory reform took place, as well as the substance of the reform.<sup>2</sup>

#### *(1) The position prior to statutory reform*

- 12.5 Prior to the 1993 statutory reform, statutory interpretation in Singapore operated within vague parameters.<sup>3</sup> There was no authoritative case from the courts outlining the proper interpretative approach to take. Neither was there any guidance on the usability of extrinsic materials in the interpretative process. The courts probably saw no need for an overarching (and binding) approach,

<sup>1</sup> This Chapter is a substantive update of Goh Yihan, "Statutory Interpretation in Singapore: 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97. For a comparative perspective, see Goh Yihan, "A Comparative Account of Statutory Interpretation in Singapore" (2008) 29 Statute LR 195.

<sup>2</sup> See also, generally, Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69 ("Robert Beckman & Andrew Phang").

<sup>3</sup> Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] SJLS 152 at 152 ("Brady Coleman").

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<sup>4</sup> [1971–1973] SL

<sup>5</sup> *Id.* at [102].

<sup>6</sup> [1974–1976] SL

<sup>7</sup> *Id.* at [10].

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> See, for example Coleman, *supra*

<sup>11</sup> [1991] 2 SLR(R)

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preferring to deal with statutory interpretation on a case-by-case basis, presumably confident that such an approach would allow the correct result to be reached in each case. There were three issues that were unclear: first, what was the proper approach to be used in statutory interpretation; secondly, when can extrinsic materials be referred to in statutory interpretation; and thirdly, assuming that they can be used, what kind of extrinsic materials can be referred to?

#### (2) *The proper approach to be used in statutory interpretation*

12.6 Insofar as the proper approach to be used in statutory interpretation is concerned, there was no determinative guidance from the Singapore courts, which used a variety of approaches. For example, the High Court in *Wah Tat Bank Ltd v Chan Cheng Kum*<sup>4</sup> adopted the “plain and ordinary meaning” of a certain statutory provision without (expressly) considering the purpose or intention behind the statute.<sup>5</sup> Similarly, in *The “Permina 108”*,<sup>6</sup> the Court of Appeal gave the statutory provision concerned its “plain and ordinary meaning”<sup>7</sup> because the words were “free of any ambiguity”<sup>8</sup> and “not reasonably capable of more than one meaning”.<sup>9</sup> In contrast to these cases that used a “plain and ordinary meaning” approach, the High Court in *Low Gim Siah v Law Society of Singapore* (“*Low Gim Siah*”)<sup>10</sup> expressly preferred the purposive approach, which involves the ascertainment and effecting of the purpose and intention underlying the relevant statutory provision.<sup>11</sup> The different approaches adopted by the Singapore courts only served to highlight the difficulties involved: were the courts allowed to

4 [1971–1973] SLR(R) 425.

5 *Id.* at [102].

6 [1974–1976] SLR(R) 850.

7 *Id.* at [10].

8 *Ibid.*

9 *Ibid.*

10 See, for example, Robert Beckman & Andrew Phang, *supra* n 2 at 72 and Brady Coleman, *supra* n 3.

11 [1991] 2 SLR(R) 917. In *Low Gim Siah*, Goh Phai Cheng JC accepted that the literal rule was “only one of the several rules of statutory interpretation” (at [23]), although he did not say authoritatively that the literal rule was no longer applicable in Singapore. In fact, he did not refer to cases wherein the literal rule was applied. The better view would, therefore, be that *Low Gim Siah* should not be regarded as a case in which the purposive approach was adopted to the exclusion of the other common law approaches prior to the 1993 statutory reform.

“pick and choose” from a selection of several approaches? And if so, were there any external guidelines governing their choice? Moreover, even if the purposive approach applied, there was also uncertainty about whether its application is predicated on preconditions.<sup>12</sup>

- 12.7 The lack of an authoritative case from the Singapore courts mirrored the situation in England,<sup>13</sup> wherein several interpretative approaches existed simultaneously, the application of one seemingly dependent on the others.<sup>14</sup> Although several members of the House of Lords had begun to adopt the purposive approach in interpreting statutes,<sup>15</sup> that did not resolve the deeper problem of the relationship between the various approaches in England.<sup>16</sup> Insofar as English law remained highly influential in Singapore at the time, the uncertainty in England only served to emphasise the problems in Singapore and stifle the rise of the purposive approach as the correct approach. Indeed, the then leading English authority for the purposive approach, *viz*, the speech of Lord Diplock in *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd*,<sup>17</sup> was not cited in any reported Singapore case prior to 1993 as authority in articulating the purposive approach.<sup>18</sup> Likewise, *Maunsell v Olins*<sup>19</sup> and *Farrell v Alexander*,<sup>20</sup> both standing for the “golden rule of construction”, which allows for departure from the literal rule and is closer to the purposive approach, had been

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(3) *The permissibility of interpretation*

12.8 As for when interpretation, inconsistent practice on the one hand, the practice of prohibited directions be followed.<sup>23</sup> the strict English *v Hart* (and, hence cases, references in Second Reading such references to reference had been Select Committee on the permissibility of be explained by recourse to extenuating so as to enable them to be what they were, at t

12 Brady Coleman, *supra* n 3 at 153.

13 See David Miers, “Barking Up the Wrong Tree: Determining the Intention of Parliament” (1992) 13 Statute LR 50 (“David Miers”); and Vera Sacks, “Towards Discovering Parliamentary Intent” (1982) Statute LR 143.

14 David Miers, *ibid*.

15 Robert Beckman & Andrew Phang, *supra* n 2 at 71. Also see *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850; *Pepper v Hart* [1992] 3 WLR 1032 at 1057. The unitary approach or the “golden rule of construction” is most generally attributed to Lord Simon: see *Maunsell v Olins* [1975] AC 373 and *Farrell v Alexander* [1977] AC 59.

16 See also Randal N Graham, “A Unified Theory of Statutory Interpretation” (2002) 23 Statute LR 91.

17 [1971] AC 850.

18 Although the case was cited for other propositions, for example, in *Ling Kai Seng and another v Outram Realty Pte Ltd* [1991] 1 SLR(R) 885 for the legal requirements of a waiver.

19 [1975] AC 373.

20 [1977] AC 59.

21 That was *Maunsell v Olins* [1975] AC 373.

22 Singapore [1991] 2 SLR(R) 885.

23 Robert Beckman & Andrew Phang, “Citing Hansard as authority in Parliamentary Materials” (2002) 23 Statute LR 29.

24 See *In Re Application of the Royal Society for the Protection of Birds v Publishing (Asia) International Ltd* [1992] 1 SLR(R) 1032 at 1057.

25 See, for example, *In re Application of the Royal Society for the Protection of Birds and Co v Sir Shenton Watson* [1974] 2 SLR(R) 247; *Moses v Moses Deceased* [1974–1975] 1 SLR(R) 885.

26 See, for example, *Telco (Singapore) Ltd v Ng Sui Wah* [1988] 2 SLR(R) 885.

27 Robert Beckman & Andrew Phang, “Citing Hansard as authority in Parliamentary Materials” (2002) 23 Statute LR 29.

applied only once<sup>21</sup> by a Singapore court prior to 1993. Therefore, it was unclear what the proper approach was in relation to statutory interpretation in Singapore prior to the 1993 reforms.

(3) *The permissibility of use of extrinsic materials in statutory interpretation*

12.8 As for when extrinsic materials can be used in statutory interpretation, there was likewise uncertainty resulting from inconsistent practices from the Singapore courts prior to 1993. On the one hand, there was an “understanding” in some cases<sup>22</sup> that the practice of the English courts prior to *Pepper v Hart*, which prohibited direct judicial reference to parliamentary debates, would be followed.<sup>23</sup> On the other hand, there was some departure from the strict English approach in at least two cases prior to *Pepper v Hart* (and, hence, before the 1993 statutory reform).<sup>24</sup> In those cases, references to parliamentary debates featuring the Minister’s Second Reading speech were made, although the question whether such references were permitted was not addressed. Likewise, reference had been made to Explanatory Statements to Bills<sup>25</sup> and Select Committee Reports,<sup>26</sup> but without any consideration of the permissibility of such reference.<sup>27</sup> The inconsistent practice may be explained by the fact that while the Singapore courts favoured recourse to extrinsic materials prior to the 1993 statutory reform so as to enable a clearer understanding of the statute concerned, they were, at the same time, hindered by the weight of English

21 That was *Maunsell v Olins* [1975] AC 373 in *Low Gim Siah v Law Society of Singapore* [1991] 2 SLR(R) 917.

22 Robert Beckman & Andrew Phang, *supra* n 2 at 75. See also David Miers, “Citing Hansard as an Aid to Interpretation” (1983) Statute LR 98; and S J Gibb, “Parliamentary Materials as Extrinsic Aids to Statutory Interpretation” (1984) Statute LR 29.

23 See *In Re Application by Laycock and Ong* [1954] MLJ 41.

24 The two cases were *Annathurai v AG* [1987] SLR(R) 387 and *Re Dow Jones Publishing (Asia) Inc v AG* [1988] 1 SLR(R) 418. For discussion, see Robert Beckman & Andrew Phang, *supra* n 2 at 75.

25 See, for example, *In the Matter of Three Orders of the Governor in Council: Alkaff and Co v Sir Shenton Thomas* [1936] SSLR 291; *Rex v Soh Eng Chian* [1937] MLJ 247; *Moses v Moses* [1965–1967] SLR(R) 797; and *Re Estate of Liu Sinn Min, Deceased* [1974–1976] SLR(R) 143.

26 See, for example, *Television Broadcasts Ltd v Golden Line Video and Marketing Pte Ltd* [1988] 2 SLR(R) 388; *Lim Ying v Hiok Kian Ming Eric* [1991] 2 SLR(R) 525; and *Ng Sui Wah Novina v Chandra Michael Setiawan* [1992] 2 SLR(R) 111.

27 Robert Beckman & Andrew Phang, *supra* n 2 at 75–76.

cases to the contrary. The probable result was that they declined to elaborate on the legal permissibility of referring to such extrinsic material while doing exactly that.

12.9 There was, however, some certainty as soon as *Pepper v Hart* was decided. That case at last provided the Singapore courts with English authority for the approach they had already adopted informally. In *Public Prosecutor v Lee Ngin Kiat* ("Lee Ngin Kiat")<sup>28</sup> and *Tan Boon Yong v Comptroller of Income Tax* ("Tan Boon Yong"),<sup>29</sup> both decided within the five-month period between *Pepper v Hart* and the 1993 statutory reform,<sup>30</sup> the High Court and the Court of Appeal cited *Pepper v Hart* in support of reference to extrinsic materials, which included the Minister's Second Reading speech. Notwithstanding that, it is interesting that the High Court in *Lee Ngin Kiat* adopted an expansive reading of *Pepper v Hart*. In that case, after stating that the statutory provision concerned was plainly and ordinarily clear in its scope and intent,<sup>31</sup> the court nonetheless went on to consider the extrinsic materials to which it was referred. However, this is contrary to Lord Browne-Wilkinson's cautious statement in *Pepper v Hart* that recourse to extrinsic materials would only be allowed if there was either an ambiguity in the statutory provision or an absurdity arising from a literal construction.<sup>32</sup> These conditions were not met in *Lee Ngin Kiat*; indeed, the court had confirmed that there was no ambiguity or absurdity present. This might have foreshadowed the effects of the 1993 statutory reform, but was an extension rather than a strict application of *Pepper v Hart*.

(4) *The type of extrinsic materials to be used in statutory interpretation*

12.10 Finally, in relation to the type of extrinsic materials permitted in statutory interpretation, there was likewise uncertainty prior to

28 [1992] 3 SLR(R) 955.

29 [1993] 1 SLR(R) 208.

30 *Pepper v Hart* [1992] 3 WLR 1032 was decided on 26 November 1992, *Public Prosecutor v Lee Ngin Kiat* [1992] 3 SLR(R) 955 was decided on 31 December 1992, *Tan Boon Yong v Comptroller of Income Tax* [1993] 1 SLR(R) 208 was decided on 5 February 1993 and the Interpretation (Amendment) Act 1993 came into effect on 16 April 1993, although the Minister's Second Reading speech took place on 26 February 1993.

31 *Supra* n 28 at [29].

32 [1992] 3 WLR 1032 at 1056.

1993. In the first two cases to the contrary, the second issue was whether the courts allowed reference to extrinsic materials prior to the 1993 statutory reform. The reference was held to be consistent with the approach adopted by the English courts.

(a) The substance of the debate was whether the interpretation of the relevant provisions of the Income Tax Act was affected by the 1993 statutory reform.

12.11 It was against the background of the interpretation of the relevant provisions of the Income Tax Act that the Interpretation (Amendment) Act 1993, read as a whole, was passed into law. The sections enacted by the Interpretation (Amendment) Act 1993 are set out below.

Purposive interpretation

9A. —(1) In interpreting the written law, the writer's purpose in the writing of the law would not prevail.

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1993. In the first place, this is a question inextricably bound up with the second issue discussed above. As has been seen, the Singapore courts allowed reference to a variety of different extrinsic materials prior to the 1993 statutory reform without deciding whether such reference was permissible. It could therefore be said that no consistent approach was taken with respect to this third issue.

- (a) The substance of statutory reform
- 12.11 It was against the above backdrop that statutory reform to statutory interpretation in Singapore took place in 1993. The Interpretation (Amendment) Bill was first introduced in Parliament on 18 January 1993, read a second and third time on 26 February 1993 and passed into law with effect from 16 April 1993. The pertinent sections enacted (or, more accurately, inserted into the existing Interpretation Act) are as follows:

Purposive interpretation of written law and use of extrinsic materials

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.

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

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

(b) to ascertain the meaning of the provision when —  
(i) the provision is ambiguous or obscure; or  
(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

(3) Without limiting the generality of subsection (2), the material that may be considered in accordance with

- that subsection in the interpretation of a provision of a written law shall include —
- (a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;
  - (b) any explanatory statement relating to the Bill containing the provision;
  - (c) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;
  - (d) any relevant material in any official record of debates in Parliament;
  - (e) any treaty or other international agreement that is referred to in the written law; and
  - (f) any document that is declared by the written law to be a relevant document for the purposes of this section.
- (4) In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —
- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and
  - (b) the need to avoid prolonging legal or other proceedings without compensating advantage.
- 12.12 These provisions shed considerable clarity on the three issues discussed above. First, s 9A(1) provides that an interpretation that would “promote the purpose or object” underlying the “written law” shall be “preferred” over an interpretation that did not do so. This evidently endorses and even mandates the use of the purposive approach ahead of all other interpretative approaches.<sup>33</sup>
- 12.13 Secondly, s 9A(2) deals with the circumstances under which extrinsic materials may be referred to in the interpretation of any

<sup>33</sup> See Robert Beckman & Andrew Phang, *supra* n 2 at 82 and Brady Coleman, *supra* n 3 at 154.

statutory provisions where use of the provisions of the extrinsic statutory provisions in its ordinary sense of the confusions of s 9A(2) further to interpret subject to when the and, if so, relevant capable to rely the provisions avoidance of

12.14 Finally, s 9A(2) may be referred to

12.15 In considering the Second Reading under s 9A(2), it may be considered that the interpretation approach will be “underlying”. The purpose was made by Cabinet contrary to a purpose was words. It was that the statu

34 Robert Beckman & Andrew Phang, *supra* n 2 at 82.

35 Robert Beckman & Andrew Phang, *supra* n 2 at 82.

36 *Singapore Parliament*, col 517 (Prof S Jayakumar).

37 *Ibid.*

38 *Id.* at col 519.

39 *Id.* at col 518. That is, the mythical beast”.

statutory provision. There are two circumstances envisioned: first, where use of the extrinsic materials would “confirm” the meaning of the provision in its ordinary meaning; and secondly, where use of the extrinsic materials would “ascertain” the meaning of the statutory provision concerned when it is ambiguous or obscure, or its ordinary meaning would lead to an absurdity. In the elucidation of the confirmatory and ascertainment use of extrinsic materials, s 9A(2) further supports the view that it is the purposive approach to interpretation that must be adopted.<sup>34</sup> Moreover, s 9A(2) is subject to s 9A(4), which provides two further considerations when the court considers whether to refer to extrinsic materials, and, if so, how much weight is to be placed on them. The two relevant considerations are, first, the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context; and secondly, the avoidance of prolonged legal proceedings.

- 12.14 Finally, s 9A(3) provides for the types of extrinsic materials that may be referred to, although the list is non-exhaustive.<sup>35</sup>
- 12.15 In considering the effects of these provisions, the Minister’s Second Reading speech – reference to which is now permissible under s 9A(2)(a) generally and s 9A(3)(c) specifically – should be considered. Insofar as the proper approach in statutory interpretation was concerned, the Minister said that the purposive approach was the “main amendment”<sup>36</sup> so as to promote the “underlying purpose behind the legislation”.<sup>37</sup> This statutory purpose was attributable to “the decisions and the intentions are made by Cabinet and the Ministers which compose the Cabinet”,<sup>38</sup> contrary to a member’s suggestion that the “mythical”<sup>39</sup> statutory purpose was really attributable to the draftsman who drafted the words. It was thus quite clear then that the Minister did not think that the statutory purpose was undecipherable or fictitious.

<sup>34</sup> Robert Beckman & Andrew Phang, *supra* n 2 at 83.

<sup>35</sup> Robert Beckman & Andrew Phang, *supra* n 2 at 86.

<sup>36</sup> *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at col 517 (Prof S Jayakumar, Minister for Law).

<sup>37</sup> *Ibid.*

<sup>38</sup> *Id.* at col 519.

<sup>39</sup> *Id.* at col 518. The member had in fact compared the intention of Parliament to a “mythical beast”.

12.16 As for the circumstances in which the courts may make use of extrinsic materials, the Minister understandably referred to *Pepper v Hart* but perhaps inadvertently understated the effect of s 9A(2) in his speech. He said that the amendments were to “enable the Courts to have recourse to the use of Ministerial statements made in Parliament when interpreting any statute in order to ascertain the intention of Parliament should the statute be ambiguous or obscure in its purpose or if a literal reading of the statute would lead to an absurdity”.<sup>40</sup> However, this seems to take away the use of extrinsic materials when a statutory provision is neither ambiguous nor would lead to an absurdity, understating the power conferred by the new s 9A(2)(a) to refer to extrinsic materials even when there is no ambiguity or absurdity. Nonetheless, given that the Minister made it clear that the courts must have recourse to such extrinsic materials in order to “make well-reasoned decisions”<sup>41</sup> in an age of “ever increasing legislation of a complexity and variety not encountered before”,<sup>42</sup> it may well be that he did not intend to circumscribe the power under s 9A(2)(a).

12.17 With the above backdrop in mind, this Chapter now turns to examine the principles of statutory interpretation in Singapore in consideration of the statutory reform in 1993, and the cases that have followed since.

### III. Principles of statutory interpretation in Singapore

#### A. *The proper interpretation approach: the purposive approach*

12.18 Following the 1993 statutory reform, the Singapore courts have affirmed the statutory directive that the purposive approach is the dominant interpretative approach. In one of the most comprehensive surveys of the law, V K Rajah JA in the High Court case of *Public Prosecutor v Low Kok Heng* (“Low Kok Heng”)<sup>43</sup> stated that the interpretation of statutes in Singapore takes place against the backdrop of s 9A(1) of the Interpretation Act, particularly since that section mandated that an interpretation promoting the statutory purpose is to be preferred over one that does not.<sup>44</sup> Accordingly,

40 *Id.* at col 517.

41 *Id.* at col 519.

42 *Ibid.*

43 [2007] 4 SLR(R) 183.

44 *Id.* at [41].

any other common meaning rule and purposive approach. *Assessor v First L* follows:<sup>47</sup>

When construing a statute, the purpose for which it was enacted would be incorrect if it were given a narrow interpretation. Indeed, by virtue of s 9A(1) of the Interpretation Act (Rev Ed), the court must give effect to the intended purpose of the legislature, not. The effect of the new section is to give effect to the paramount purpose of the law. *Low Kok Heng* [2007] 4 SLR(R) 183 at 191.

12.19 And even more recently, in *Michael v World Tax*,<sup>48</sup> the court had no doubt when it held:

In *Low Kok Heng*, the court held that the purposive approach mandates that the court must take into account the purpose of the statute in interpreting the meaning rule. We concur.

12.20 Although the court has held that the purposive approach is the dominant interpretative approach, there are circumstances that require more than one approach. In such cases, the “purposive approach” will be used to interpret the statute.

45 *Id.* at [39] and [41]. See also *Public Prosecutor v Low Kok Heng* at 183 where the court held that the Interpretation Act allows the court to consider extrinsic materials when confirming the purpose of a statute. The court held that the “ordinary meaning rule” must give way to the purpose of the statute if the ordinary meaning of the words in the statute is inconsistent with the purpose or object of the statute. The court held that the purpose or object of the statute is to be determined by reference to its context in the written language of the statute and not by an unequivocal rejection of the ordinary meaning rule.

46 [2008] 2 SLR(R) 724.

47 *Id.* at [10].

48 [2013] 3 SLR 354 at [18].

*Tax* [2014] 2 SLR 462 at 463.

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## Singapore purposive approach

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any other common law interpretative approach, such as the plain meaning rule and the strict construction rule, must yield to the purposive approach.<sup>45</sup> Furthermore, the Court of Appeal in *Chief Assessor v First DCS Pte Ltd*<sup>46</sup> explained the effect of s 9A(1) as follows:<sup>47</sup>

When construing statutory provisions, it is important to consider the purpose for which Parliament enacted the provision in question. It would be incorrect to read the provision as if it existed in a vacuum. Indeed, by virtue of s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed), the courts must prefer an interpretation which supports the intended purpose of a provision over an interpretation that does not. The effect of that section is to make the purposive approach the paramount rule of construction in our jurisprudence: *PP v Low Kok Heng* [2007] 4 SLR(R) 183.

- 12.19 And even more recently, the Court of Appeal in *Dorsey James Michael v World Sport Group Pte Ltd* has put the matter beyond doubt when it held that:<sup>48</sup>

In *Low Kok Heng* at [56]–[57] VK Rajah JA stated that the purposive approach mandated by s 9A(1) of the Interpretation Act is paramount and must take precedence over any other common law principles of statutory interpretation including, as in the case before us, the plain meaning rule. We agree.

- 12.20 Although the courts have been largely consistent in saying that the purposive approach is to be applied, there are difficulties that require more specific consideration: first, what exactly is the “purposive approach”, and secondly, when can the purposive approach be used?

45 *Id.* at [39] and [41]. See also [44], where the learned judge referred to s 9A(2) of the Interpretation Act and held that the reference there to the recourse to extrinsic materials when confirming or ascertaining that the meaning of the statutory provision is the “ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law” is an unequivocal rejection of the literal rule and/or any other approach suggesting that the purpose or object can be considered only when the ordinary meaning is obscure or ambiguous.

46 [2008] 2 SLR(R) 724.

47 *Id.* at [10].

48 [2013] 3 SLR 354 at [18]. See also *BFC Development LLP v Comptroller of Property Tax* [2014] 2 SLR 462 at [14].

(1) *What is the purposive approach?*

12.21 It is perhaps surprising that exactly what the purposive approach entails is uncertain. In this regard, a great many terminologies have been used to express the purposive approach, such as “to ascertain the true legislative intention”,<sup>49</sup> “to put Parliament’s intention into effect”,<sup>50</sup> “to [give] effect to the intention of the legislature”;<sup>51</sup> “to give effect to the intent and will of Parliament”;<sup>52</sup> or simply that the court “should prefer an interpretation that will promote the purpose or object underlying the [Act concerned]” (thereby replicating the words of s 9A(1)).<sup>53</sup> While these phrases provide that the statutory purpose must be given effect to, there appears to be a few problems with its understanding.

- (a) The difference between the purposive approach and the circumstances in which extrinsic material is permitted

12.22 The first problem is an apparent conflation between the purposive approach and the circumstances in which extrinsic materials is permitted in accordance with the purposive approach. It should be recognised that the purposive approach does not mandate the use of extrinsic materials; all that it mandates is that the statutory purpose must be given effect to. Thus, statements conflating the purposive approach with the circumstances in which extrinsic materials are permitted should be avoided. An example of such statements may be found in the High Court case of *Tan Un Tian*

49 *Raffles City Pte Ltd v AG* [1993] 2 SLR(R) 606 at [17].

50 *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR(R) 948 at [26]. For a similar expression, see, for example, *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR(R) 30 at [21]; *Nicholas Kenneth v Public Prosecutor* [2003] 1 SLR(R) 80 at [24]; and *Rightrac Trading v Ong Soon Heng* [2003] 4 SLR(R) 505 at [28].

51 *Tan Un Tian v Public Prosecutor* [1994] 2 SLR(R) 729 at [39].

52 See *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803 at [44]; *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745 at [45]; and *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [58].

53 *Bestland Development Pte Ltd v Manit Udomkunnatum* [1996] 2 SLR(R) 300 at [42]; *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759 at [18]; *Yusen Air & Sea Service (S) Pte Ltd v Changi International Airport Services Pte Ltd* [1999] 3 SLR(R) 95 at [49]; *Star City Pty Ltd v Tan Hong Woon* [2001] 2 SLR(R) 36 at [36]; and *Public Prosecutor v Loo Kun Long* [2003] 1 SLR(R) 28 at [11]. Elsewhere it has been stated that a “generous and not a pedantic interpretation should be adopted; see also s 9A of the Interpretation Act ...”: see *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [49].

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58 [2005] 1 SLR(R) 4

59 *Id.* at [25].

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*v Public Prosecutor*,<sup>54</sup> where the court thought that the purposive approach was subject to s 9A(4)<sup>55</sup> (which touches on the use of extrinsic material), when in fact s 9A(4) does not limit the purposive approach at all.<sup>56</sup>

- 12.23 It is respectfully suggested that such statements could lead to confusion between the use of the purposive approach itself and the separate issue concerning the circumstances in which extrinsic materials may be used. These are two separate issues, and the fact that s 9A provides for these two issues separately in two subsections shows that the two are not identical.<sup>57</sup> An appreciation of the separation in the two issues is found in *The “Seaway”*,<sup>58</sup> where the Court of Appeal held that a purposive approach would “invariably” (but not always) involve reference to extrinsic materials.<sup>59</sup>

(b) The “purpose” under the purposive approach

- 12.24 A second problem under this section concerns the “purpose” under the purposive approach: is this the purpose of the statute stated generally, or is this the consequential intention concerning the specific statutory provision? The problem can be illustrated by adapting an example made famous by HLA Hart: suppose a statute enacted in 1970 bans “vehicles” from a public park. Suppose also that in 1970, there were no toy wagons controlled by a tablet. Suppose further that it is now 2014, and Tan wants to pull his baby through the park in precisely such a wagon. Does the statute prevent him from doing so? If the court construes the purpose of the statute “generally”, it might conclude that the purpose of the statute is to ban vehicles from the park that cause disruption,

54 [1994] 2 SLR(R) 729.

55 *Id.* at [31].

56 See also Robert Beckman & Andrew Phang, *supra* n 2 at 86.

57 The conflation of s 9A(1) and (2) (and hence the two separate issues) appears also to affect submissions from lawyers which may in fact explain why the courts have similarly been misled. For example, in *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR(R) 30, counsel for the appellant suggested that “reliance on s 9A(1) should only be allowed when there is ambiguity as to the meaning of a provision or when the plain and literal meaning of the words used in a provision would lead to an absurd result against the obvious intention of Parliament” before going on to cite authorities relating to the circumstances when extrinsic materials may be used (at [20]).

58 [2005] 1 SLR(R) 435.

59 *Id.* at [25].

and that while the tablet-controlled wagon was certainly not statutorily contemplated in 1970, it should not be disallowed. On the other hand, if the court adopts a more “specific” view, it might conclude that because tablet-controlled wagons were not specifically contemplated in 1970, it does not come within the vehicles prohibited.<sup>60</sup> As is clear, while both courts would reach the same conclusion, the way they do so is quite different and this could make a difference in a different case.

12.25 An example of a court taking a “general” view of the purpose of a statute is *Raffles City Pte Ltd v AG (“Raffles City”)*.<sup>61</sup> That case concerned the interpretation of the phrase “a storey of an approved development project” in the Property Tax Order 1967.<sup>62</sup> The question was whether the phrase covered three modern multiplexes comprising of a total of 138 stories. LP Thean J thought that the Minister’s comments made it clear that “he certainly did not contemplate—not surprisingly as the speech was made more than 25 years ago – a construction of an immense multi-building complex with which we are familiar today”.<sup>63</sup> Instead, Thean J found that the Minister’s comments disclosed that the general purpose underlying the Order was to encourage private participation in urban redevelopment and it was pursuant to that general purpose that the court found for the defendants.<sup>64</sup> In that case, the court did not think that Parliament was capable of thinking through each and every exact consequence of its statutory provisions and viewed the relevant statutory intent as being a general purpose underlying the statute. Yet another example can be found in *The “Seaway”*,<sup>65</sup> where the High Court thought that the Minister’s “reference to damage to facilities at PSA” was merely “illustrative in nature” and “not intended to be exhaustive in nature and scope”.<sup>66</sup> The general purpose behind the statute needs to be investigated. A more recent example is the High Court case of *Kee Yau Chong v*

60 This could be related to the concept of ambulatory construction as explained in *Victor Chandler International Ltd v Customs and Excise Commissioners* [2000] 1 WLR 1296.

61 [1993] 2 SLR(R) 606.

62 No S 80/1967, published on 22 April 1967 pursuant to the Property Tax Ordinance 1960 (Ord 72 of 1960), now the Property Tax Act (Cap 254, 2005 Rev Ed).

63 *Supra* n 61 at [25].

64 *Supra* n 61 at [23] and [27].

65 [2004] 2 SLR(R) 577.

66 *Id.* at [43].

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*S H Interdeco Pte Ltd*,<sup>67</sup> where the court had to construe the word “accident” in the Work Injury Compensation Act.<sup>68</sup> In doing so, the court noted that the statute was a piece of social legislation such that the payment of compensation prescribed by it was not based on the employer’s fault. More specifically, amendments made to the statute in 2011 were made in cognisance of work place fights and not designed to preclude claims arising from such fights. Instead, the court found that the aim was to ensure that employers did not have to compensate those who are “primarily responsible for the aggression”. The word “accident” was accordingly given a broad meaning to cover compensation arising from fights, but only if the employee was not the primary aggressor. Finally, in *AQQ v Comptroller of Income Tax*,<sup>69</sup> the High Court, in deciding whether an arrangement constitutes tax avoidance under the Income Tax Act,<sup>70</sup> held that the meaning of a specific provision must be interpreted in the context of the statute as a whole.<sup>71</sup>

- 12.26 An example of a court focusing on the consequential intention concerning the specific statutory provision can be found in *Public Prosecutor v Keh See Hua*.<sup>72</sup> In that case, the issue was whether s 5(8) of the Employment of Foreign Workers Act<sup>73</sup> precluded the court from treating each charge for contravention of the statute as a separate and distinct offence for which a separate and distinct sentence should be passed. The relevant extract of the Minister’s speech revealed that s 5(8) was envisaged to protect a first-time offender from the mandatory jail sentence for subsequent offences by providing that all convictions at one trial be considered as one conviction. On that basis, Yong Pung How CJ decided that the sole purpose of s 5(8) is to protect a first-time offender from the mandatory jail sentence but that did not prevent the court from sentencing him for each of the charges he faced under the statute concerned. The learned Chief Justice did not consider whether this advanced the purpose behind the statute generally.<sup>74</sup> Similarly,

67 [2014] 1 SLR 189.

68 (Cap 354, 2009 Rev Ed).

69 [2013] 1 SLR 1361.

70 (Cap 134, 2008 Rev Ed).

71 *Supra* n 69 at [153].

72 [1994] 1 SLR(R) 915.

73 (Cap 91A, 1991 Rev Ed).

74 Indeed, the consequences were rather severe in that case since the accused was charged with 19 charges. Having decided on the effect of s 5(8), Yong CJ imposed

in *Toh Teong Seng v Public Prosecutor*,<sup>75</sup> Yong CJ in the High Court referred to the Minister's Second Reading speech of the Environmental Public Health Act<sup>76</sup> and decided that the purpose of a particular section was to deter dumping.<sup>77</sup>

12.27 It is suggested that there ought not be a stark choice between the "general" purpose of a statute and the "specific" consequential purpose of its individual provisions. In the first place, if the statute is internally consistent – as it ought to be – then the specific" consequential purpose of its individual provisions would simply elaborate on its "general" purpose. However, it is suggested that the courts ought not to focus only on the specific purpose as these may at times be merely illustrative of a more general purpose which, depending on the circumstances, can supersede the more specific consequential purpose. Indeed, in *ADP v ADQ*,<sup>78</sup> the Court of Appeal held that the court should discern the statutory intent from the provisions as a whole and their context instead of other parts of the same provisions.<sup>79</sup> Similarly, in *W Y Steel Construction Pte Ltd v Osko Pte Ltd*,<sup>80</sup> the Court of Appeal referred to using the "guiding philosophy" behind a statute to interpret it.<sup>81</sup> The utility of a court looking at the "general" purpose of a statute can be seen in *Public Prosecutor v Mohammad Ashik bin Aris*,<sup>82</sup> where the High Court rightly pointed out that purposive interpretation is needed to "facilitate the effective operation of the written law at the application level",<sup>83</sup> especially if the legislator could not have anticipated all the consequences of a statute. If a court were focused on specific purposes, it might miss out the general purposes that better suit the statutory purpose. Similarly, as we have seen from

19 sentences of three months' imprisonment each, and overruled the lower court's sentence of 38 weeks' imprisonment on the basis of a single conviction.

75 [1995] 1 SLR(R) 757.

76 (Cap 95, 1988 Rev Ed).

77 See also, for example, *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759; *Taw Cheng Kong v Public Prosecutor* [1998] 1 SLR(R) 78; *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745; *Public Prosecutor v Tsao Kok Wah* [2001] 1 SLR(R) 252; *Public Prosecutor v Loo Kun Long* [2003] 1 SLR(R) 28; and *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR(R) 780.

78 [2012] 2 SLR 143.

79 *Id.* at [30].

80 [2013] 3 SLR 380.

81 *Id.* at [18].

82 [2011] 4 SLR 34.

83 *Id.* at [192]–[193].

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84 *Supra* n 43 at [50].

85 *Id.* at [52]. See also *1 Comfort Management* which the High Cou the courts should not a legislative function and law-making."

86 *Supra* n 43 at [53].

87 *Supra* n 78.

*Raffles City*, a strict adherence to the Minister's speech, which clearly illustrates a specific consequential purpose but did not foresee the multiplexes of the present time, would actually have frustrated the general purpose behind the statute. That would have fallen afoul of the statutorily mandated approach under s 9A(1) of the Interpretation Act.

- (c) The relationship between the purposive approach and the literal meaning of a statutory provision
- 12.28 A third problem relates to methodology: what does the purposive approach actually allow? Specifically, how does the purposive approach relate to a literal reading of the statutory provision? There appears to be three views. The first view is that the purposive approach may permit a literal reading of a statutory provision if such reading gives effect to the statutory purpose. However, the text controls the extent to which a "non-literal" meaning may be reached. An example of this view may be found in *Low Kok Heng*, where Rajah JA thought that a purposive approach should not be construed as being at odds with a literal reading of the statutory provision.<sup>84</sup> More importantly, he thought that statutory provisions should not, in the name of applying the purposive approach, be interpreted in a manner that goes against all possible and reasonable interpretation of the express actual wording of the provision.<sup>85</sup> In essence, the court is bound by the text as enacted that is being interpreted,<sup>86</sup> but the statutory purpose may be discerned through a non-literal reading of the text within reasonable confines. This view was also expressed in the Court of Appeal case of *ADP v ADQ*,<sup>87</sup> where the court emphasised that it ought not to superimpose what it feels *ought* to be the meaning

84 *Supra* n 43 at [50].

85 *Id.* at [52]. See also *Tan Un Tian v Public Prosecutor* [1994] 2 SLR(R) 729 at [39]; *Comfort Management Pte Ltd v Public Prosecutor* [2003] 2 SLR(R) 67 at [18], in which the High Court stated that if the statutory word is capable of one meaning, the courts should not give it an alternative meaning for to do so would be to perform a legislative function: "A line must still be drawn between purposive interpretation and law-making."

86 *Supra* n 43 at [53].

87 *Supra* n 78.

of the statutory provision concerned, notwithstanding the plain meaning of the statutory language.<sup>88</sup>

- 12.29 A second view, which is quite opposite from the first view, is that the statutory purpose is completely independent of the statutory text. An expression of such a view may be found in the Attorney-General's argument (which was not expressly adopted by the court) in *Constitutional Reference No 1 of 1995*.<sup>89</sup> In that case, it was argued by the Attorney-General that the purposive approach allowed the court "to modify or reject the literal meaning of any provision to give effect to [the statutory] purpose or object, and to change the legislative words to achieve that purpose or object, once the intention of Parliament was ascertained".<sup>90</sup> This seems to suggest a general ability possessed by the courts to effectively rewrite statutory provisions to achieve the underlying "purpose". Such ability was arguably demonstrated by the High Court in *Public Prosecutor v Knight Glenn Jeyasingam*<sup>91</sup> ("Knight Glenn Jeyasingam"). In that case, the "without prejudice" rule contained in s 23 of the Evidence Act<sup>92</sup> (which applies to civil proceedings) was applied to criminal proceedings on the basis that the Evidence Act was a "facilitative statute" which permitted the introduction of "common law rules not expressly provided for under the ... Act" in accordance with "the will and intent of Parliament".<sup>93</sup>
- 12.30 A third view straddles the first and second views: while the statutory purpose must be given effect to, such statutory purpose will *always* be found in precise and unambiguous statutory text. Thus, where the statutory provision is indeed so clear, it will be literally interpreted because that is regarded as giving effect to the statutory purpose. Thus, it was held in the Court of Appeal case of *Public Prosecutor v Manogaran s/o R Ramu*<sup>94</sup> ("Manogaran s/o R Ramu") that the "cardinal rule" in statutory interpretation was to

88 *Id.* at [29]. By "plain meaning", the court probably means the range of reasonable meanings capable of being borne by the text, rather than its literal meaning.

89 [1995] 1 SLR(R) 803.

90 *Id.* at [15]. Although cf Brady Coleman, *supra* n 3 at 156, who seems to have thought that these were the Tribunal's own words as opposed to a summary of the Attorney-General's arguments.

91 [1999] 1 SLR(R) 1165.

92 (Cap 97 1997 Rev Ed).

93 *Supra* n 91 at [57]–[61].

94 [1996] 3 SLR(R) 390.

give effect to the statutory purpose. That is, that if the statutory language does not bear that purpose, the court has the power to give effect to the purpose in the plain and natural sense of the language used, as in *Fatimah bte Kumin Lim v Kumin Lim*,<sup>95</sup> where the statutory language must be given its plain and natural meaning.<sup>96</sup>

- 12.31 Between the three views, the third view is the one to be preferred for the following reasons. First, it gives primacy to the purpose of the statute, as required by s 9A(1) of the Constitution.<sup>97</sup> Second, it is the third view. In contrast, the first view, as in *Public Prosecutor v Manogaran s/o R Ramu*,<sup>98</sup> gives primacy to the plain meaning of the statutory language, and unambiguously rejects the purposive approach.<sup>99</sup> Indeed, in *Co Pte Ltd v Qin Liang*,<sup>100</sup> the Court of Appeal held that the cardinal rule of statutory interpretation is that it could, in a proper case, depart from the plain meaning of the statutory language.<sup>101</sup> Recently, Andrew Ng, a Justice of the Supreme Court, in his judgment in *Lim Li Pheng Mok v Public Prosecutor*,<sup>102</sup> acknowledged that the cardinal rule is not willing to depart from the plain meaning of the statutory language to effect the statutory purpose, unless the statutory purpose can be given their plain meaning.<sup>103</sup> The third view, based on a literal interpretation of the statutory language, acknowledging that the cardinal rule is not willing to depart from the plain meaning of the statutory language to effect the statutory purpose, unless the statutory purpose can be given their plain meaning, is the most appropriate approach to statutory interpretation.

95 *Id.* at [34].

96 [2014] 1 SLR 547.

97 *Id.* at [64].

98 Of course, the two cases are *Public Prosecutor v Distressed Alpha Fund* and *Co Pte Ltd v Qin Liang*.

99 [2009] 2 SLR(R) 814.

100 [2010] 1 SLR 1041.

101 *Id.* at [22]. See also *Marina Bay Financial Centre Pte Ltd v Public Prosecutor*,<sup>104</sup> at [18]–[19];

102 See *Kok Chong Weng v Public Prosecutor*,<sup>105</sup> at [18]–[19].

give effect to the intention “expressed in the provision itself”, such that if the statutory wording is precise and unambiguous, then all that the court had to do was to expound the words in their ordinary and natural sense.<sup>95</sup> A softer expression of this view can be found in *Fatimah bte Kumin Lim v Attorney-General*<sup>96</sup> (“*Fatimah bte Kumin Lim*”), where the High Court accepted that words must be given their “ordinary and natural meaning” in statutory interpretation.<sup>97</sup>

- 12.31 Between the three views, it is suggested that Rajah JA’s view is to be preferred for two reasons. In the first place, it rightly gives primacy to the purposive approach, as is statutorily mandated for by s 9A(1) of the Interpretation Act. This makes it preferable to the third view. In contrast, the Court of Appeal’s view in *Manogaran s/o R Ramu* arguably placed the literal approach ahead of the purposive approach since it is not always the case that a precise and unambiguous statutory text will give effect to the statutory purpose.<sup>98</sup> Indeed, in *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd*,<sup>99</sup> the Court of Appeal held that while the word “may” is usually non-obligatory, it could, in a proper context, be taken to create an obligation. More recently, Andrew Ang J in the High Court case of *Goh Teh Lee v Lim Li Pheng Maria*<sup>100</sup> (“*Goh Teh Lee*”) held that the courts are willing to depart from a statutory provision’s literal interpretation to effect the statutory purpose.<sup>101</sup> Thus, the view that words are to be given their “ordinary and natural meaning” must yield to the purposive approach, even if the interpretation might be strained based on a literal reading.<sup>102</sup> Having said that, it must of course be acknowledged that if the non-literal reading strains the text beyond reasonable confines, then that ought not to be permitted as well.

95 *Id.* at [34].

96 [2014] 1 SLR 547.

97 *Id.* at [64].

98 Of course, the two can coincide at times: see *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 at [26].

99 [2009] 2 SLR(R) 814.

100 [2010] 1 SLR 1041.

101 *Id.* at [22]. See also *Marina Bay Sands Pte Ltd v Ong Boon Lin Lester* [2011] SGHC 73 at [18]–[19].

102 See *Kok Chong Weng v Wiener Robert Lorenz* [2009] 2 SLR(R) 709 at [51].

- 12.32 Secondly, Rajah JA's view gives proper respect to the statutory text. This in turn makes it preferable to the second view. Indeed, the view that a court possesses a general ability to rewrite statutory provisions is problematic because, taken to its logical conclusion, it effectively allows for the introduction of something not contemplated by the statutory words. The statutory language is to place proper limits to which interpretation can go. The danger of such an approach can be seen in *Knight Glenn Jeyasingam* itself. In that case, plea-bargaining in criminal cases was a concept unknown at the time the Evidence Act was enacted. Hence, to say that s 23 applied to criminal proceedings was to misconstrue the intention of Parliament and replace it with the court's own perception of the statutory purpose.<sup>103</sup>
- 12.33 Having said that, however, the Court of Appeal in *Kok Chong Weng v Wiener Robert Lorenz*<sup>104</sup> ("Kok Chong Weng") held that a court may *exceptionally* read words into a statute that were not expressly included in it if:<sup>105</sup>

(a) it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that Parliament sought to remedy with the Act; (b) it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, the eventuality that was required to be dealt with so that the purpose of the Act could be achieved; and (c) it was possible to state with certainty what the additional words would be that the draftsman would have inserted and that Parliament would have approved had their attention been drawn to the omission. In *Inco Europe Ltd* at 592, Lord Nicholls of Birkenhead framed the third requirement in a broader fashion as follows: that the court must be abundantly sure of "the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed". In our view,

103 See *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [122], in which the High Court questioned the decision in *Public Prosecutor v Knight Glen Jeyasingam* on this basis. Also see, for example, *Nicholas Kenneth v Public Prosecutor* [2003] 1 SLR(R) 80 for another instance where the High Court effectively wrote into the statutory provision concerned (s 234(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed)) a scenario which the draftsman had "overlooked" but which was in line with the "intention of Parliament due to the supremacy of s 9A(1) of the Interpretation Act" (at [24]).

104 *Supra* n 102.

105 *Supra* n 102 at [57].

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- 12.35 Ultimately, sup role of judges i his seminal wo and non-interpr to alter a text is act of interpret language (expl the express rew point at which l

106 Aharon Barak, *Purpo Press, 2005).*

107 *Id*, at pp 14–15.

108 *Id*, at p 18.

109 *Id*, at p 15.

110 J Steyn, "Interpretatio *The Coming Together* Hart Publishing, 2000 in "Some Reflections 543, where he wrote: " still bound by it." *F Prosecutions* [1962] A applicable to all kinds provision a meaning w they are capable of m meanings, but beyond

given the broad wording of s 9A of the Interpretation Act, the broader formulation of Lord Nicholls is more consonant with the legislative purpose of that provision.

- 12.34 However, this is a very limited power that is applied only in very clear cases. It may be arguable that s 9A(1), in providing that preference be given to an interpretation that promotes the purpose underlying the written law, even if such purpose is not expressly stated, might be helpful for reading in words in a statute to promote such an unstated purpose. However, it is submitted that, in the normal situation, the words of the statute constitute the ambit within which the statutory purpose can be realised. Indeed, the test in *Kok Chong Weng* envisages that not only that the rectifiable error in the statute must be clear (and hence not a judicial inference), but also that the court must be certain what Parliament would have intended. These are strict conditions that will only be satisfied in exceptional cases.
- 12.35 Ultimately, support for Rajah JA's view is firmly founded on the role of judges in interpreting a statute. As Aharon Barak puts it in his seminal work,<sup>106</sup> there is a difference between interpretative and non-interpretative doctrines.<sup>107</sup> Barak states that the authority to alter a text is one that belongs to its author, *i.e.*, Parliament. The act of interpretation is the giving of a legal text a meaning its language (explicitly or implicitly) can bear and does not involve the express rewriting of the language.<sup>108</sup> Interpretation ends at the point at which language ends.<sup>109</sup> As Lord Steyn put it:<sup>110</sup>

106 Aharon Barak, *Purposive Interpretation in Law* (Princeton: Princeton University Press, 2005).

107 *Id.* at pp 14–15.

108 *Id.* at p 18.

109 *Id.* at p 15.

110 J Steyn, "Interpretation: Legal Texts and Their Landscape" in B Markesinis (ed), *The Coming Together of the Common Law and the Civil Law* (United Kingdom: Hart Publishing, 2000) at p 81. See also the illuminating comments of Frankfurter J in "Some Reflections on the Reading of Statutes" (1947) 47 Colum L Rev 527 at 543, where he wrote: "While courts are no longer confined to the language, they are still bound by it." Finally, the remarks of Lord Reid in *Jones v Director of Public Prosecutions* [1962] AC 635 (at 662) are equally apposite: "It is a cardinal principle applicable to all kinds of statutes that one may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear. If they are capable of more than one meaning then one can choose between those meanings, but beyond that one must not go."

The judge must concentrate on the different meaning which the text is capable of letting in. What falls beyond that range of possible meanings will not be a result attainable by interpretation. Principles of institutional integrity which bind all judges set those limits for judges.

- 12.36 Indeed, it is on the “principles of institutional integrity” that one finds the best reason for the courts to shy away from performing non-interpretative acts such as rewriting statutory provisions in the guise of interpretative ones. The constitutional framework and the separation of powers restrict interpreters from giving the language of the statute any meaning they desire.<sup>111</sup> Moreover, judicial support for Rajah JA’s view can be found in Andrew Phang Boon Leong J’s judgment in *Nation Fittings (M) Sdn Bhd v Oystertec plc*,<sup>112</sup> where the learned judge said that the court’s purposive interpretation should be “consistent with, and should not either add to or take away from, or stretch unreasonably, the literal language of the statutory provision concerned”.<sup>113</sup> More recently, Andrew Ang J restated these views in the High Court case of *Goh Teh Lee*,<sup>114</sup> and the Court of Appeal in *Au Wai Pang v Attorney-General*<sup>115</sup> expressed its doubts over “whether a purposive interpretation can be used to construe a statute in a way that cannot be supported by the language within”.

(d) Can the purposive approach be used to “update” an outdated statute?<sup>116</sup>

<sup>111</sup> *Supra* n 106 at p 20. This was also alluded to by Rajah JA in *Low Kok Heng* [2007] 4 SLR(R) 183 when he said (at [52]): "Courts must be cautious to observe the limitations on their power and to confine themselves to administering the law. 'Purposive construction often requires a sophisticated analysis to determine the legislative purpose and a discriminating judgment as to where the boundary of construction ends and legislation begins' (*per* McHugh JA in *Kingston v Keprose Pty Ltd* (1987) 11 NSWLR 404 at 423). Section 9A of the Interpretation Act should not be viewed as a means or licence by which judges adopt new roles as legislators; the separation of powers between the judicial branch and the legislative branch of government must be respected and preserved."

<sup>112</sup> [2006] 1 SLR(R) 712.

<sup>113</sup> *Id.* at [27]. Andrew Phang Boon Leong JA repeated these views in *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [59].

<sup>114</sup> *Supra* n 100 at [18].

<sup>115</sup> [2014] 3 SLR 357 at [25].

<sup>116</sup> See generally Goh Yihan, "Two Contrasting Approaches in the Interpretation of Outdated Statutory Provisions" [2010] 2 SJLS 530.

12.38 There appears to be no Court in *BF* that has held that a statutory purpose of a law is passed by reference to generally irreconcilable provisions. The court may do so if subsequently it is found that some of previous statutory provisions are to this effect. It may also rewrite older provisions, as in *WX v WW*<sup>120</sup> (1992) 173 CLR 1, in which the court held that the presumption of the existence of a will during the course of a marriage was to be presumed as at the date when the marriage began.

117 *Supra* n 92.

118 (Cap 224, 2008 Rev)

<sup>119</sup> [2013] 4 SLR 741, 6.

120 [2009] 3 SLR(B) 57

<sup>121</sup> *Supra* n 92.

the different meaning which it falls beyond that range of what attainable by interpretation. which bind all judges set those

constitutional integrity" that one shies away from performing being statutory provisions in the constitutional framework interpreters from giving the they desire.<sup>111</sup> Moreover, can be found in Andrew *Interpretation Fittings (M) Sdn Bhd* judge said that the court's consistent with, and should not stretch unreasonably, the provision concerned".<sup>113</sup> More views in the High Court of Appeal in *Au Wai Pang* doubts over "whether a construe a statute in a way ge within".

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by Rajah JA in *Low Kok Heng* courts must be cautious to observe themselves to administering the law. detailed analysis to determine the extent as to where the boundary of Hugh JA in *Kingston v Keprose* of the Interpretation Act should es adopt new roles as legislators; such and the legislative branch of

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12.37 A final (and related) problem is how the courts should interpret a statute that is "outdated". This is a particularly relevant issue in Singapore because of the number of antiquated statutes present from the British colonial times, such as the Evidence Act<sup>117</sup> and the Penal Code.<sup>118</sup> The difference between this problem and the second problem just discussed is that in this case, the statute actually provides for a situation that is clearly outdated. In contrast, the situation contemplated in the preceding problem involved a more open-ended statutory provision. This can be illustrated by adapting Hart's example again: suppose that in 1970 it was enacted that *only* a four-wheeled vehicle with wheels made of rubber is prohibited from public parks. Thus, unlike the earlier example, the statutory provision actually provides for an actual (and seemingly exhaustive) example. Suppose further that it is now 2014, and wheels are made of a steel alloy that did not exist in 1970. Tan wants to drive his car with wheels made of the steel alloy into the park. Does the statute prevent him from doing so? Can a court "update" the 1970 statutory provisions to take into account of 2014 developments?

12.38 There appears to be two relevant principles. First, the High Court in *BFC v Comptroller of Income Tax*<sup>119</sup> stated that the statutory purpose is to be determined at or around the time the law is passed. As such, subsequent statutory provisions are generally irrelevant to the interpretation of the earlier statutory provisions. This is uncontroversial; indeed, it would be dangerous if subsequent statutory provisions can affect the interpretation of previous statutory provisions without express statutory intent to this effect, since that would allow the courts the latitude to rewrite older statutory provisions. Such danger can be seen in *WX v WW*<sup>120</sup> ("WX"), where the High Court had to interpret s 114 of the Evidence Act.<sup>121</sup> Section 114 provides that a person born during the continuance of a valid marriage shall be conclusively presumed as the legitimate child of that marriage, unless it could be shown that the parties had no access to one another during the marriage. This provision was enacted at a time when DNA

117 *Supra* n 92.

118 (Cap 224, 2008 Rev Ed).

119 [2013] 4 SLR 741, overruled in [2014] 2 SLR 462, but not on this particular point.

120 [2009] 3 SLR(R) 573.

121 *Supra* n 92.

- testing did not exist to determine the parentage of a child. On the facts of *WX*, there was a DNA test report showing that the child concerned was not the biological child of the respondent's former husband in her now-annulled marriage, but of another man with whom she had sexual relations. The question was how the DNA test report affected the application of s 114 since the child was indeed born during the marriage between the respondent and her former husband. The High Court understandably thought that the argument that the child was from the marriage "offend[ed] both justice and common sense"<sup>122</sup> and that such an outcome would mean that "the law would hold that [the respondent's former husband] is the father of the child even though the science has shown otherwise".<sup>123</sup> Relatedly, the court opined that it was "difficult" to see how Parliament, in enacting ss 68 and 69 of the Women's Charter<sup>124</sup> (which established a legal duty on the part of the parent to contribute to the maintenance of his children whether they are his legitimate children) more than half a century after s 114 of the Evidence Act was enacted, could have intended to relieve the duty to provide maintenance under the Charter *vis-à-vis* the biological father when the mother happened to be married to another man at the time of birth.<sup>125</sup> The court was essentially using a subsequent statutory provision to interpret an older statute enacted a century earlier. This is dangerous because it is anyone's guess what Parliament intended with respect to s 114 of the Evidence Act, as that provision was likely never contemplated by Parliament when the Women's Charter was debated and passed into law.
- 12.39 Secondly, although subsequent statutory provisions cannot be used to affect the interpretation of an older statutory provision, the Court of Appeal in *AAG v Estate of AAH, deceased*<sup>126</sup> ("AAG") stated that "[i]t is a settled principle that a statutory provision should be construed in a manner which will take into account new situations which may arise and which were not within contemplation at the time of its enactment".<sup>127</sup> Thus, in contrast to subsequent statutory provisions, subsequent *circumstances* may be used to affect the

122 *Supra* n 120 at [6].

123 *Ibid.*

124 (Cap 353, 2009 Rev Ed).

125 *Supra* n 120 at [17].

126 [2010] 1 SLR 769.

127 *Id.* at [30].

interpretation of the statute. So far this statement refers to the court interpreting ss 2 and 3 of the Evidence Act, which was enacted in 1985. The court disregarded social norms and decided that the intention of Parliament at the time of enactment was to reach the intended interpretation of the provisions of the Evidence Act. The court reached this conclusion by applying the approach in *AAG*. The court referred to the principles of the Interpretation Act, namely that of a given statutory provision (in this case, the scope of the duty to contribute to the maintenance of children) must be determined in the framework and context of the entire statute (in this case, the Women's Charter) from which the provision arises. The Court of Appeal held that the court must interpret the provisions in the context of the entire statute, and not just the specific provision in question. The court also noted that the intention of Parliament was to ensure that the duty to contribute to the maintenance of children is not limited to the biological father, but also includes the stepfather or other male relative who is in fact the father of the child. The court also noted that the intention of Parliament was to encourage fathers to take responsibility for their children, even if they are not biologically related to them. The court also noted that the intention of Parliament was to encourage fathers to take responsibility for their children, even if they are not biologically related to them.

If the correct interpretation of the Evidence Act, as at the time of its enactment, is that it does not apply to maintenance by an illegitimate child, then the scope by judicial interpretation of the statute, in accordance with the mores, it is that the intention of Parliament was to ensure that the duty to contribute to the maintenance of children is not limited to the biological father, but also includes the stepfather or other male relative who is in fact the father of the child. The court also noted that the intention of Parliament was to encourage fathers to take responsibility for their children, even if they are not biologically related to them.

- 12.40 Thus, while language in the Evidence Act may not have any meaning, the purpose of the statute was, and remains, to provide for any "updates" to the law. The purpose of the statute is simply to include the intention of Parliament to ensure that the duty to contribute to the maintenance of children is not limited to the biological father, but also includes the stepfather or other male relative who is in fact the father of the child.

128 (Cap 138, 1985 Rev Ed).

129 *Singapore Parliamentary Debates* 1985 cols 77–78 (Mr Yong Nyuk Leong).

130 *Supra* n 126 at [40] and [41].

131 *Supra* n 126 at [31].

132 *Supra* n 106 at pp 23–24.

133 Relevantly, in *Lee Chee Koon v Ngai Phyllis* [2008] 1 SLR 769, the Court of Appeal endorsed (at [23]) the view expressed by Justice Goh in *Goh v Ngai Phyllis* [2008] 1 SLR 769 that the intention of Parliament in enacting the Evidence Act could not be limited to the developments which occurred before the law was passed.

interpretation of an older statutory provision. The question is how far this statement takes us. In *AAG*, the Court of Appeal had to interpret ss 2 and 3(1) of the Inheritance (Family Provision) Act,<sup>128</sup> which was enacted some 45 years ago.<sup>129</sup> The Court of Appeal disregarded social developments since the enactment of the statute, and decided that the original statutory purpose present at the time of enactment was determinative of the correct interpretation of the provisions concerned. However, the result was “regretfully” reached.<sup>130</sup> The key to understanding the Court of Appeal’s approach in *AAG* is to be clear of the purpose behind s 9A of the Interpretation Act, which involves the judicial interpretation of a given statutory provision. As seen above, the constitutional framework and the separation of powers restrict interpreters (ie, the courts) from stretching the meaning of statutory provisions. The Court of Appeal in *AAG* was well aware of these limitations when it said:

If the correct interpretation of the [Inheritance (Family Provision) Act], as at the time of its enactment, was that it could not be invoked by an illegitimate child, then it is not for the courts to extend its scope by judicial interpretation. However, if, due to changing social mores, it is thought that the Act should now be made available to an illegitimate child, then that would be a matter within the province of Parliament to take the appropriate measure to amend the law.<sup>131</sup>

- 12.40 Thus, while language is open to varying degrees of interpretation,<sup>132</sup> this does not mean that it is infinitely malleable and can take on any meaning.<sup>133</sup> The only question is what the relevant statutory purpose was, and to what extent the court can take into account any “updates” to the original statutory purpose. In this respect, an “updating interpretation” is probably permissible if the updating is simply to include within a wide category, specific modes which

128 (Cap 138, 1985 Rev Ed).

129 *Singapore Parliamentary Debates, Official Report* (21 April 1966) vol 25 at cols 77–78 (Mr Yong Nyuk Lin, for the Minister for Law and National Development).

130 *Supra* n 126 at [40] and [44].

131 *Supra* n 126 at [31].

132 *Supra* n 106 at pp 23–24.

133 Relevantly, in *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447, the Court of Appeal endorsed (at [116]) what was said in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 that “the ‘facilitative’ characterisation of the [Evidence Act] could not extend the ambit of the [Evidence Act] to cover common law developments which were inconsistent with it”.

were not in existence at the time the statute was introduced and if the enumerated examples in the statute are not meant to be exhaustive.<sup>134</sup> This much was acknowledged by the Court of Appeal in *AAG*.<sup>135</sup> In such a situation, the language is not stretched because the concern was with the broader category generally, not modes of it specifically. But it is a different thing if the “updating” gives rise to the impression of rewriting the statutory provisions,<sup>136</sup> such as inserting updated examples where the statute is meant to be exhaustive.

(2) When is the purposive approach used?

- 12.41 Moving away now from the meaning of the purposive approach, another point of interest concerns the circumstances in which the purposive approach can be used. Despite some uncertainty just after s 9A was enacted,<sup>137</sup> the general approach that neither ambiguity nor inconsistency needs to exist within a statutory provision before a purposive approach could be adopted seems to be well settled now. This was so held by the Court of Appeal in *Planmarine AG v Maritime and Port Authority of Singapore* (“*Planmarine AG*”),<sup>138</sup> and unequivocally and authoritatively confirmed in *Low Kok Heng*.<sup>139</sup> A more recent endorsement of

<sup>134</sup> See, for example, *SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd* [2005] 2 SLR(R) 651 at [78]. See also Francis Bennion, *Bennion on Statutory Interpretation: A Code* (London: LexisNexis, 5th Ed, 2008) at p 889 (“Francis Bennion”): “An updating construction of an enactment may be defined as a construction which takes account of relevant changes which have occurred since the enactment was originally framed *but does not alter the meaning of its wording in ways which do not fall within the principles originally envisaged by that wording*” (emphasis added).

<sup>135</sup> *Supra* n 126 at [30].

136 Applied to *WX*, scientific truth may not be legal truth. There are examples of scientific developments not adopted into the law by Parliament (where statutes are concerned) or the Judiciary, such as lie detection tests. Parliament has arguably also seen it fit not to reopen criminal cases validly decided by the courts notwithstanding DNA evidence showing the innocence of the convicted. In law, the convicted remains guilty notwithstanding the scientific exoneration. This is another example of scientific truth not being equated with legal truth: see Goh Yihan, "The Jurisdiction of the Singapore Court of Appeal to Reopen Criminal Cases" [2008] 2 SJLS 395. See also Tan Cheng Han, "The Legal Implications of Artificial Insemination by Donor" [1991] SJLS 466 at 468–469.

137 *Re How William Glen* [1994] 2 SLR(R) 357 at [14].

<sup>138</sup> [1999] 1 SLR(R) 669.

<sup>139</sup> [2007] 4 SLR(R) 183. See also *Yusen Air & Sea Service (S) Pte Ltd v Changi International Airport Services Pte Ltd* [1999] 3 SLR(R) 95 at [49] (which involved

this approach can  
*James Michael*

- 12.42 However, whether to penal statutes in *Low Kok Hee* Act mandated all statutory provisions approach took place of interpretation, such that “[a]ll written law must be construed purposively” [emphasis added]. It did say that, in accordance with construction rules, the person’s benefit concerned remains the primary interpretation.

12.43 This, it is respectfully submitted, is the purposive approach that can be possible to achieve. It is further heightened by the words of *Teng Lang Kuan* in which Justice Yong CJ endorsed the view that if there was ambiguity in the law,

statute was introduced statute are not meant to be acknowledged by the Court of Appeal. The language is not stretched over category generally, not least thing if the “updating” of the statutory provisions,<sup>136</sup> where the statute is meant to

of the purposive approach, circumstances in which Despite some uncertainty, the general approach that neither exist within a statutory could be adopted seems to be endorsed by the Court of Appeal in *Public Authority of Singapore v Schenker Singapore (Pte) Ltd*.<sup>137</sup> Finally and authoritatively, the recent endorsement of

*d v Schenker Singapore (Pte) Ltd* at [19].<sup>138</sup> Bennion, *Bennion on Statutory Interpretation* (2nd Ed, 2008) at p 889 (“Francis Goh Yihan has argued that ‘ment may be defined as a conduct which have occurred since the date of the meaning of its wording in question, and not only envisaged by that wording’”)

truth. There are examples of Parliament (where statutes are passed). Parliament has arguably also been interpreted by the courts notwithstanding that they were convicted. In law, the convicted person’s intention. This is another example of Francis Goh Yihan, “The Jurisdictional Issues in Criminal Cases” [2008] 2 SJLS 395, on the issue of Artificial Insemination by

*Service (S) Pte Ltd v Changi Hospital* [2008] 1 SLR 95 at [49] (which involved

this approach can be found in the Court of Appeal case of *Dorsey James Michael v World Sport Group Pte Ltd*.<sup>140</sup>

- 12.42 However, whether and when the purposive approach can be applied to penal statutes still appears to be uncertain. As will be recalled, in *Low Kok Heng*, Rajah JA held that s 9A of the Interpretation Act mandated a purposive approach in the construction of all statutory provisions. He further stated that the purposive approach took precedence over all other common law principles of interpretation. Indeed, the learned judge robustly declared that “[a]ll written law (penal or otherwise) must be interpreted purposively” [emphasis added].<sup>141</sup> Notwithstanding this, Rajah JA did say that, in interpreting penal statutes, the common law strict construction rule, which mandated a construction to the accused person’s benefit, might be invoked if the statutory provision concerned remained ambiguous despite all attempts at purposive interpretation.
- 12.43 This, it is respectfully submitted, is problematic for it assumes that the purposive approach can fail; that is, in some circumstances, it can be possible to fail to find the statutory purpose. The uncertainty is further heightened in some earlier cases. In the High Court case of *Teng Lang Khin v Public Prosecutor* (“*Teng Lang Khin*”),<sup>142</sup> Yong CJ endorsed the strict construction rule for penal statutes if there was ambiguity in the statutory provision concerned.<sup>143</sup>

the interpretation of an international convention); *Public Prosecutor v Knight Glenn Jeyasingam* [1999] 1 SLR(R) 1165; *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745; *Credit Corp (M) Bhd v Public Prosecutor* [2000] 2 SLR(R) 938; *Public Prosecutor v Tsao Kok Wah* [2001] 1 SLR(R) 252; *Nicholas Kenneth v Public Prosecutor* [2003] 1 SLR(R) 80; *Progress Software Corp (S) Pte Ltd v Central Provident Fund Board* [2003] 2 SLR(R) 156; *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR(R) 780; *The “Seaway”* [2004] 2 SLR(R) 577 (HC), [2005] 1 SLR(R) 435 (CA); *Chai Choon Yong v Central Provident Fund Board* [2005] 2 SLR(R) 594; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484; *Tee Soon Kay v AG* [2006] 4 SLR(R) 385; and *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR(R) 809.

140 [2013] 3 SLR 354 at [19].

141 *Supra* n 43 at [41]. See also at [56]–[57].

142 [1994] 3 SLR(R) 1040.

143 See also the later High Court case of *Public Prosecutor v Tsao Kok Wah* [2001] 1 SLR(R) 252 in which Yong CJ first considered whether the penal provision in question was ambiguous. Having considered that it was not, he regarded the rule requiring a strict construction of penal statutes as irrelevant. Yong CJ then referred to s 9A(1) of the Interpretation Act as requiring a purposive approach over a literal

Furthermore, in *Forward Food Management Pte Ltd v Public Prosecutor*,<sup>144</sup> Yong CJ advanced the proposition that the proper approach to be taken by a court in construing a penal provision is to “first consider if the literal and purposive interpretations of the provision leave the provision in ambiguity” [emphasis added].<sup>145</sup> He further stated that it was only after *these and other tools* of ascertaining Parliament’s intent have been exhausted,<sup>146</sup> that the strict construction rule applies. This has recently been accepted by the High Court in *Ho Sheng Yu Gareth v Public Prosecutor*<sup>147</sup> and *Chee Soon Juan v Public Prosecutor*.<sup>148</sup>

- 12.44 It is submitted that the correct approach is to regard the strict construction rule for penal statutes as a presumption of the statutory purpose, and nothing more. The rationale for the rule was explained by the High Court in *Public Prosecutor v Phuthita Somchit*<sup>149</sup> as giving effect to the presumption that Parliament intended to penalise only through clear laws. Thus, where laws were unclear, then they should be interpreted in the accused person's favour. Viewed this way, it might be better to say the rule applies *subject* to a contrary intention found via the purposive approach. This avoids the unsatisfactory view that the purposive approach can fail to find the statutory purpose, and instead accords the rule its true status as merely presumptive but not conclusive of the statutory purpose. An example of such an approach may be found in the District Court case of *Public Prosecutor v Buergin Juerg*.<sup>150</sup> The court observed the rule of interpretation that a penal statute is not to be construed as ruling out a *mens rea* requirement, unless when it is clearly refuted by the statutory purpose as evidenced by relevant extrinsic material.

approach and that that was the “real question” (at [22]). However, with respect, a better reasoning could have been that because of s 9A(1), the strict construction rule, an interpretative approach as much as the purposive approach, ought to give way in preference to the latter. It was for this reason, and not due to any lack of ambiguity, that rendered the strict construction rule inapplicable, unless, of course, it accords with the statutory purpose.

<sup>144</sup> [2002] 1 SLR(R) 443.

<sup>145</sup> *Id.* at [26].

<sup>146</sup> Ibid. See also *Comfort Management Pte Ltd v Public Prosecutor* [2003] 2 SLR(R) 67 at [19] for a similar “three-step test”.

<sup>147</sup> [2012] 2 SLR 375 at [55].

<sup>147</sup> [2012] 2 SLR 575 at [55].

<sup>149</sup> [2011] 3 SLR 719 at [25].

<sup>149</sup> [2011] 3 SER 715 &

**B.**      *The reference to*

(1)    *When can extrin-*

12.45 Insofar as the use of extrinsic materials is permitted by s 9A(1), the courts may rely on the provisions of the provision to determine its meaning. The position has not been clarified by the confirmatory and explanatory provisions of s 9A(2)(a) probably because it is not clear whether extrinsic materials are to be used to interpret the provision or to interpret the meaning of the provision. It is also not clear whether the use of extrinsic materials necessarily presumes that the ordinary meaning of the provision does not begin with, and is not limited to, the ordinary meaning of the words used. In contrast, the function of the explanatory provision is to provide the meaning of the provision in cases where the ordinary meaning of the words used is absurd in its application.

- 12.46 The earlier cases and (seemingly) the view that amb extrinsic materia Thean J opined cases, to have re meaning of a stat no mention of th Thean J made no the learned judge the application o require ambiguity referred to. In doi in *Pepper v Harr* to, apparently tre statutory position

<sup>151</sup> *Supra* n 43 at [45].

<sup>152</sup> *Supra* n 61 at [19].

<sup>153</sup> *Supra* n 61 at [20]–[21].

## B. The reference to extrinsic materials

### (1) When can extrinsic materials be referred to?

- 12.45 Insofar as the circumstances in which reference to extrinsic materials is permitted, Rajah JA in *Low Kok Heng* emphasised that the courts may refer to extrinsic materials even where the meaning of the provision concerned is clear on its face.<sup>151</sup> However, the position has not always been clear due to confusion over the confirmatory and ascertainment aspects of s 9A(2). In this regard, s 9A(2)(a) provides for a *confirmatory* function: it provides that extrinsic material can be used to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision, taking into account its statutory purpose. This necessarily presupposes that the text is *not* ambiguous or obscure to begin with, and that extrinsic materials can be used to *confirm* the ordinary meaning of the text, even if no ambiguity or obscurity exists. In contrast, s 9A(2)(b) provides for an *ascertainment* function: it provides that extrinsic material can be used to *ascertain* the meaning of the text when it is ambiguous, obscure, or would be absurd in its application.
- 12.46 The earlier cases emphasised the ascertainment function of s 9A(2) and (seemingly) ignored its confirmatory function. There was thus the view that ambiguity, obscurity or absurdity was required before extrinsic materials can be referred to. For example, in *Raffles City*, Thean J opined that s 9A(2) “allows the courts, in appropriate cases, to have recourse to additional materials … to *ascertain* the meaning of a statutory provision” [emphasis added].<sup>152</sup> There was no mention of the confirmatory aspect of s 9A(2) even though Thean J made no express finding of ambiguity or obscurity. In fact, the learned judge went on to cite *Tan Boon Yong*, which accepted the application of *Pepper v Hart* in Singapore, which in turn did require ambiguity or obscurity before extrinsic materials may be referred to. In doing so, Thean J repeated the narrower formulation in *Pepper v Hart* as to when extrinsic materials may be referred to, apparently treating that formulation as an exact mirror of the statutory position in s 9A(2).<sup>153</sup>

<sup>151</sup> *Supra* n 43 at [45].

<sup>152</sup> *Supra* n 61 at [19].

<sup>153</sup> *Supra* n 61 at [20]–[21].

- 12.47 The first light of change in this area came in the decision of the Constitution Tribunal in *Constitutional Reference No 1 of 1995*, in which the Tribunal repeated, but did not expressly adopt, the Attorney-General's argument that s 9A enabled the Tribunal to "look at all legislative materials to ascertain the meaning of any provision of a written law, whether or not that provision was ambiguous".<sup>154</sup> Nonetheless, it appears that the Tribunal did accept this argument as it later referred to extrinsic materials in apparent confirmation of the statutory interpretation it had adopted, without the presence of ambiguity or absurdity.<sup>155</sup> The first case to unequivocally clarify the uncertainty was the High Court case of *ACS Computer Pte Ltd v Rubina Watch Co (Pte) Ltd* ("ACS Computer"),<sup>156</sup> in which Warren Khoo J referred to s 9A(2)(a) and (b),<sup>157</sup> thereby taking into account the confirmatory function of the section for the first time. In *Planmarine AG*, the Court of Appeal finally referred to s 9A(2)(a) and (b) separately, and affirmed that the confirmatory function of s 9A(2)(a) does not require for ambiguity or obscurity to be present.<sup>158</sup> The same court affirmed that approach more recently in *Dorsey James Michael v World Sport Group Pte Ltd*.<sup>159</sup>
- 12.48 However, the courts are not obliged to refer to extrinsic material<sup>160</sup> although it may be difficult for them to discharge their statutorily mandated duty of giving effect to the statutory purpose without doing so.

(2) *What type of extrinsic materials can be referred to?*

- 12.49 Finally, this Chapter considers the issue of the type of extrinsic materials referable. Generally, there appears to be no closed list as to the type of extrinsic materials referable. Indeed, the courts take the view that s 9A(3) provides a non-exhaustive list of the types of extrinsic materials referable. This approach was confirmed in *ACS Computer*, where Khoo J held that the list of materials set out in s 9A(3) "is not exhaustive" and that the "general provision" of

154 *Supra* n 89 at [15].

155 *Supra* n 89 at [54]–[59].

156 [1997] 1 SLR(R) 1006.

157 *Id.* at [18].

158 *Supra* n 138 at [22].

159 *Supra* n 140.

160 *Seow Wei Sin v Public Prosecutor* [2011] 1 SLR 1199.

the section "allow[ing] the court to look at all legislative materials in the ascertainment of the meaning of any provision of a written law".<sup>161</sup> Circumstances have made several changes to the Bill concerned, leading to the Second Reading of this section to make changes which allows for recording of debates relating to general commercial statute being interpreted.

161 *Supra* n 156 at [19].

162 See, for example, *GE Pacific Pte Ltd v Public Prosecutor* [1995] 600; *Re Shares in Turris Sdn Bhd* [1995] 1 SLR(R) 755; *Lee Han Teck v Public Prosecutor* [1995] 1 SLR(R) 755; *No 549 v Chew Eu Hock* [1995] 1 SLR(R) 755; *Kong v Public Prosecutor* [1995] 1 SLR(R) 755; *Chief Assessor v Public Prosecutor* [1998] 3 SLR(R) 745; *Seow Wei Sin v Public Prosecutor* [2011] 1 SLR 1199; *World Sport Group Pte Ltd v Sevugan Kalyanasundaram* [2011] 1 SLR 1199; *Income Tax* [2006] 1 SLR 1199; *Lorenza* [2008] 4 SLR(R) 745.

163 See, for example, *Comptroller of Income Tax v Bestland Development Pte Ltd* [1994] 2 SLR(R) 948; *Public Prosecutor v W Holdings Pte Ltd* [1994] 2 SLR(R) 948; *Public Prosecutor v Mariano Diaz Priscilla* [1994] 2 SLR(R) 948; *Public Prosecutor v Authority of Singapore* [1994] 2 SLR(R) 948; *Public Prosecutor v MC* [2000] 2 SLR(R) 745; *MC v Public Prosecutor* [2000] 2 SLR(R) 745; *Noor Mohamad v Public Prosecutor* [1994] 3 SLR(R) 350; *Noor Mohamad v Public Prosecutor* [1994] 3 SLR(R) 350; *Public Prosecutor v Bestland Development Pte Ltd* [1994] 1 SLR(R) 670; *Public Prosecutor v Bestland Development Pte Ltd* [1994] 1 SLR(R) 670; *Public Prosecutor v Loo Kun Lorenza* [2008] 4 SLR(R) 745; *Gilbert v Public Prosecutor* [2003] 3 SLR(R) 435 (CA); *Nguyen v Public Prosecutor* [2007] 1 SLR(R) 265; *Comptroller of Income Tax v Eng* [2007] 1 SLR(R) 265; *Authority of Singapore v Public Prosecutor* [2014] 1 SLR 189; *Public Prosecutor v (M) Bhd v Public Prosecutor* [2014] 1 SLR 189.

164 See, for example, *supra* n 161.

165 See, for example, *Diaz Priscilla v Public Prosecutor* [1994] 2 SLR(R) 948; *Public Prosecutor v Authority of Singapore* [1994] 2 SLR(R) 948; *Public Prosecutor v MC* [2000] 2 SLR(R) 745; *MC v Public Prosecutor* [2000] 2 SLR(R) 745; *Noor Mohamad v Public Prosecutor* [1994] 3 SLR(R) 350; *Noor Mohamad v Public Prosecutor* [1994] 3 SLR(R) 350; *Public Prosecutor v Bestland Development Pte Ltd* [1994] 1 SLR(R) 670; *Public Prosecutor v Bestland Development Pte Ltd* [1994] 1 SLR(R) 670; *Public Prosecutor v Loo Kun Lorenza* [2008] 4 SLR(R) 745; *Gilbert v Public Prosecutor* [2003] 3 SLR(R) 435 (CA); *Nguyen v Public Prosecutor* [2007] 1 SLR(R) 265; *Comptroller of Income Tax v Eng* [2007] 1 SLR(R) 265; *Authority of Singapore v Public Prosecutor* [2014] 1 SLR 189; *Public Prosecutor v (M) Bhd v Public Prosecutor* [2014] 1 SLR 189.

the section “allows reference to any material capable of assisting in the ascertainment of the meaning of the provision in the circumstances stated in s 9A”.<sup>161</sup> Thus, under s 9A(3)(b), the courts have made several references to explanatory statements relating to the Bill concerned.<sup>162</sup> As for s 9A(3)(c), which allows for reference to the Second Reading speech, the courts have made full use of this section to make the necessary reference.<sup>163</sup> For s 9A(3)(d), which allows for reference to “any relevant material in any official record of debates in Parliament”, the courts have mainly referred to general comments of Ministers prior to the introduction of the statute being interpreted,<sup>164</sup> and extracts of Parliamentary debates.<sup>165</sup>

<sup>161</sup> *Supra* n 156 at [19].

<sup>162</sup> See, for example, *GE Pacific Pte Ltd v Comptroller of Income Tax* [1993] 3 SLR(R) 600; *Re Shares in Turris SEA Pte Ltd* [1995] 3 SLR(R) 320; *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803; *Public Prosecutor v Sng Siew Ngoh* [1995] 3 SLR(R) 755; *Lee Han Tiong v Tay Yok Swee* [1996] 2 SLR(R) 833; *MCST Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR(R) 934; *Taw Cheng Kong v Public Prosecutor* [1998] 1 SLR(R) 78; *Shell Eastern Petroleum Pte Ltd v Chief Assessor* [1998] 3 SLR(R) 874; *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745; *The “Seaway”* [2004] 2 SLR(R) 577; *Master Contract Services Pte Ltd v Sevugan Kalyanasundaram* [2005] 1 SLR(R) 475; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484; and *Chang Mei Wah Selena v Wiener Robert Lorenza* [2008] 4 SLR(R) 385.

<sup>163</sup> See, for example, *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR(R) 948; *Public Prosecutor v Keh See Hua* [1994] 1 SLR(R) 915; *Tan Un Tian v Public Prosecutor* [1994] 2 SLR(R) 729; *Toh Teong Seng v Public Prosecutor* [1995] 1 SLR(R) 757; *Public Prosecutor v Manogaran s/o R Ramu* [1996] 3 SLR(R) 390; *Bestland Development Pte Ltd v Manit Udomkunnatum* [1996] 2 SLR(R) 300; *L & W Holdings Pte Ltd v Management Corporation Strata Title Plan No 1601* [1997] 3 SLR(R) 30; *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759; *Taw Cheng Kong v Public Prosecutor* [1998] 1 SLR(R) 78; *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 1 SLR(R) 669; *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745; *MCST Plan No 1938 v Goodview Properties Pte Ltd* [2000] 3 SLR(R) 350; *Noor Mohamed bin Mumtaz Shah v Apollo Enterprises Ltd* [2000] 1 SLR(R) 670; *Public Prosecutor v Tsao Kok Wah* [2001] 1 SLR(R) 252; *Public Prosecutor v Loo Kun Long* [2003] 1 SLR(R) 28; *Public Prosecutor v Louis Pius Gilbert* [2003] 3 SLR(R) 418; *The “Seaway”* [2004] 2 SLR(R) 577 (HC), [2005] 1 SLR(R) 435 (CA); *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103; *Comptroller of Income Tax v HY* [2006] 2 SLR(R) 405; *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265; *OpenNet Pte Ltd v Info-communications Development Authority of Singapore* [2013] 2 SLR 880; *Kee You Chong v S H Interdeco Pte Ltd* [2014] 1 SLR 189; *Public Prosecutor v Li Weiming* [2014] 2 SLR 393.

<sup>164</sup> See, for example, *supra* n 61.

<sup>165</sup> See, for example, *Diaz Priscillia v Diaz Angela* [1997] 3 SLR(R) 759; *Credit Corp (M) Bhd v Public Prosecutor* [2000] 2 SLR(R) 938 (referring to parliamentary debates relating to a different Act than the one being interpreted, although on the same subject matter of forfeiture of vehicles); *American Express Bank Ltd v Abdul*

Under s 9A(3)(f) read together s 9A(3), which does not limit the extrinsic materials referable, the courts have referred to previous manifestations of the statute concerned (whether local or foreign),<sup>166</sup> Select Committee reports,<sup>167</sup> Law Revision Committees' reports,<sup>168</sup> case law,<sup>169</sup> academic commentaries,<sup>170</sup> and even diplomatic notes

*Manaff bin Ahmad* [2003] 4 SLR(R) 780; *Tee Soon Kay v AG* [2006] 4 SLR(R) 385; *Chang Mei Wah Selena v Wiener Robert Lorenza* [2008] 4 SLR(R) 385; *Bachoo Mohan Singh v Public Prosecutor* [2010] 1 SLR 966; *Re Andrews Geraldine Mary QC* [2013] 1 SLR 872.

166 This is especially so to trace the statutory history of a statute, on the presumption that Parliament's intention at the time of enactment endures until express parliamentary amendment: see, for example, *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR(R) 780; *The "Seaway"* [2005] 1 SLR(R) 435 (CA); *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484; *Tee Soon Kay v AG* [2006] 4 SLR(R) 385; *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR(R) 809; *First DCS Pte Ltd v Chief Assessor* [2007] 3 SLR(R) 326; *Chief Assessor v First DCS Pte Ltd* [2008] 2 SLR(R) 724; *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447; *ADP v ADQ* [2012] 2 SLR 143; *Glengary Pte Ltd v Chief Assessor* [2012] 4 SLR 1130; *Tan Eng Hong v Attorney-General* [2013] 4 SLR 1059. However, in *The "Seaway"* [2004] 2 SLR(R) 577 (HC), the High Court remarked that "[e]xcept where a statute reveals a contrary intention, every statute must always be interpreted as an 'always speaking statute'" (at [32]).

167 See, for example, *Public Prosecutor v Teoh Ai Nee* [1993] 3 SLR(R) 755; *Abdul Rahman bin Mohamed Yunoos v Majlis Ugama Islam Singapura* [1995] 2 SLR(R) 394; *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803; *Chuan Hoe Engineering Pte Ltd v Public Prosecutor* [1996] 3 SLR(R) 200; *Re Ng Lai Wat; Official Assignee v Housing and Development Board* [1996] 2 SLR(R) 261; *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR(R) 7; *Aztech Systems Pte Ltd v Creative Technology Ltd* [1995] 3 SLR(R) 568; *RSP Architects Planners & Engineers v Ocean Front Pte Ltd* [1995] 3 SLR(R) 653; *Bee See & Tay v Ong Hun Seang* [1997] 1 SLR(R) 469; *MCST Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR(R) 934; and *Lau Loon Seng v Sia Peck Eng* [1999] 2 SLR(R) 688. There have also been references to the Minister's Third Reading speech which took into account extracts from the Select Committee reports. Thus, while not directly referred to, these reports were in substance referred to. See also, *Chang Mei Wah Selena v Wiener Robert Lorenza* [2008] 4 SLR(R) 385.

168 This includes foreign reports, particularly when the local statute had its origins in a foreign statute: see, for example, *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745; and *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447.

169 See, for example, *Toh Teong Seng v Public Prosecutor* [1995] 1 SLR(R) 757; *The "Seaway"* [2005] 1 SLR(R) 435; *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [73] and [75]; *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR(R) 484; *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265; *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR(R) 809; *A-G v Tee Kok Boon* [2008] 2 SLR(R) 412; *Chief Assessor v First DCS Pte Ltd* [2008] 2 SLR(R) 724; and *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447.

170 See, for example, *ACS Computer Pte Ltd v Rubina Watch Co (Pte) Ltd* [1997] 1 SLR(R) 1006; *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [63]; *Public Prosecutor v Knight Glenn Jeyasingam* [1999] 1 SLR(R) 1165; *JD Ltd v*

exchanged in ... even an attempt concerned for that the guide implied that the extrinsic material which material provision conc more prevalent *v Public Prosec* materials in re Penal Code.<sup>175</sup>

12.50 Relatedly, the *bin Kadir*<sup>176</sup> re Interpretation A words and expr in the subject referring to "the other Acts in po the subject-mat consistent with the courts to c statutory provi

12.51 However, as co in the foregoing cases that limit High Court cas *Kwang Peng*"), use of academi

*Comptroller of Income*  
[2007] 4 SLR(R) 809;

171 *Supra* n 65.

172 *Master Contract Serv*  
475 at [26]–[27].

173 *Supra* n 58.

174 [2008] 3 SLR(R) 447.

175 (Cap 224, 1985 Rev E

176 [2013] 3 SLR 1052.

177 *Id*, at [8], citing Franci

178 [1997] 2 SLR(R) 569.

which does not limit the scope referred to previous reports (whether local or foreign),<sup>166</sup> Committees' reports,<sup>168</sup> even diplomatic notes<sup>169</sup>

*v AG [2006] 4 SLR(R) 385; [2008] 4 SLR(R) 385; Bachoo v Andrews Geraldine Mary*

on the presumption that until express parliamentary intent is made *Abdul Manaff bin SLR(R) 435 (CA); JD Ltd v Lee Soon Kay v AG [2006] 4 SLR(R) 809; First DCS Pte Assessor v First DCS Pte Prosecutor [2008] 3 SLR(R) 200; Abd v Chief Assessor [2012] 4 SLR 1059.* However, in court remarked that “[e]xcept must always be interpreted

[1993] 3 SLR(R) 755; Abdul Ingapura [1995] 2 SLR(R) 803; Chuan Hoe SLR(R) 200; Re Ng Lai Wat; [1996] 2 SLR(R) 261; Balwant Systems Pte Ltd v Creative Planners & Engineers v Ongay v Ong Hun Seang [1997] 2 SLR(R) 688. There have been cases which took into account while not directly referred to, Chang Mei Wah Selena v

al statute had its origins in v Heah Lian Khin [2000] 2 SLR(R) 447. [1995] 1 SLR(R) 757; The v Low Kok Heng [2007] 4 SLR(R) 265; Ng Chin Siau v How [2008] 2 SLR(R) 412; Chief and Lee Chez Kee v Public

atch Co (Pte) Ltd [1997] 1 SLR(R) 4 SLR(R) 183 at [63]; 1 SLR(R) 1165; JD Ltd v

exchanged in relation to international conventions.<sup>171</sup> There was even an attempt to refer to a guide published by the Ministry concerned for laypersons, but this was refused on the basis that the guide was itself ambiguous.<sup>172</sup> Indeed, it has even been implied that there is nothing to differentiate between the types of extrinsic materials referable, and that the court has to determine which material better assisted the court in construing the statutory provision concerned.<sup>173</sup> Nowhere is reference to extrinsic materials more prevalent than the Court of Appeal case of *Lee Chez Kee v Public Prosecutor*,<sup>174</sup> where the court referred to a plethora of materials in reaching the statutory purpose behind s 34 of the Penal Code.<sup>175</sup>

- 12.50 Relatedly, the Court of Appeal in *Public Prosecutor v Adnan bin Kadir*<sup>176</sup> regarded the “context” referred to by s 2(1) of the Interpretation Act – which provides default meanings to certain words and expressions in written law unless there is something in the subject or context inconsistent with such meaning – as referring to “the legislative history of that Act, the provisions of other Acts *in pari materia*, and all facts constituting or concerning the subject-matter of the Act”.<sup>177</sup> The court regarded this as being consistent with s 9A(2) of the Interpretation Act, which allows the courts to consider any extrinsic material in interpreting a statutory provision.
- 12.51 However, as contrasted with the broad reading of s 9A(3) taken in the foregoing cases, there appears to be a concurrent line of cases that limit the type of extrinsic materials referable. In the High Court case of *Lee Kwang Peng v Public Prosecutor* (“Lee Kwang Peng”),<sup>178</sup> Yong CJ stated that s 9A(3) did not warrant the use of academic texts in construing the intention of Parliament,

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*Comptroller of Income Tax [2006] 1 SLR(R) 484; Ng Chin Siau v How Kim Chuan [2007] 4 SLR(R) 809; and Lee Chez Kee v Public Prosecutor [2008] 3 SLR(R) 447.*

171 *Supra* n 65.

172 *Master Contract Services Pte Ltd v Sevugan Kalyanasundaram* [2005] 1 SLR(R) 475 at [26]–[27].

173 *Supra* n 58.

174 [2008] 3 SLR(R) 447.

175 (Cap 224, 1985 Rev Ed).

176 [2013] 3 SLR 1052.

177 *Id.* at [8], citing Francis Bennion, *supra* n 134 at p 588.

178 [1997] 2 SLR(R) 569.

as academic texts and the private works of draftsmen were “conspicuously absent” from the list of extrinsic materials provided in s 9A(3).<sup>179</sup> Yong CJ did not cite *ACS Computer*, in which the exact opposite result was reached. At least one commentator has supported Yong CJ’s approach in *Lee Kwang Peng*, by pointing to the absence of any reference by the Minister in the Second Reading speech of the Interpretation (Amendment) Bill in 1993 to any other extrinsic material apart from parliamentary materials and explanatory statements.<sup>180</sup> Yet another instance of a case attempting to limit the extrinsic materials referable is *Taw Cheng Kong v Public Prosecutor*,<sup>181</sup> where M Karthigesu JA held that it was not correct to rely on earlier material to interpret subsequent statutory provisions as if the subsequent statute was tailored from a retrospective standpoint to fit in seamlessly with the earlier statute. He referred to s 9A(3)(b) and 9A(3)(c) of the Interpretation Act as permitting only reference to explanatory statements or speeches relating to the Bill *in question*, and thereby found support for his proposition that when interpreting an amendment to a statute, the court must look not to the explanations to the statute itself, but to the explanations to the amendment.<sup>182</sup> Although he stated that he was aware of the wide ambit of s 9A(3)(d), he did not think it wise to set a precedent for the unregulated use of original material in construing a subsequent amendment.<sup>183</sup>

12.52 It is suggested that there ought not to be a judicially-imposed limit on the type of extrinsic materials referable. While the courts may be understandably concerned about being flooded with an overly broad range of such material, it is unlikely that this would happen in all cases. Furthermore, bearing in mind the statutory permission to refer to a range of materials to ascertain the statutory purpose, it is all the more important that the courts do not affect their ability to fulfil this purpose by limiting the type of extrinsic material referable.<sup>184</sup>

179 *Id.* at [46].

180 Low Siew Ling, “Citing Legal Authorities in Court” (2004) 16 SAcLJ 168 at 187.

181 [1998] 1 SLR(R) 78.

182 *Id.* at [41].

183 *Id.* at [42].

184 *Supra* n 180.

(3) The effect of

12.53 The effect of provisions in *Sin v Public Prosecutor* on the accused was that an Exit Permit was issued on a Ministerial stand the law against defaulters, whereas sentences of fines. The question is whether correct to have the law passing sentence.

12.54 The High Court held that the actual usage of the word “meaning of” in the statute does not mean that the court cannot consider the actual words of the statute to be used as a guide. The court of caution expressed the view that “[t]he words ‘meaning of’ the law” are to be interpreted in accordance with the will of Parliament. As we have seen, the use of extrinsic material, governed by the Ministerial stand the law against defaulters, whereas sentences of fines. The question is whether correct to have the law passing sentence.

185 *Supra* n 160.

186 (Cap 93, 2001 Rev Ed).

187 *Supra* n 160 at [21].

188 (1987) 162 CLR 51.

189 *Supra* n 160 at [24].

(3) *The effect of extrinsic materials*

- 12.53 The effect of extrinsic materials on the interpretation of statutory provisions was discussed by the High Court in *Seow Wei Sin v Public Prosecutor*<sup>185</sup> ("Seow Wei Sin"). In that case, the accused was convicted of remaining outside of Singapore without an Exit Permit, punishable by s 33 of the Enlistment Act.<sup>186</sup> Relying on a Ministerial Statement made in 2006 that explained the tough stand the Ministry of Defence took against National Service defaulters, the District Court imposed a term of imprisonment whereas sentencing precedents for similar offences involved only fines. The question on appeal was whether the District Court was correct to have been influenced by the Ministerial Statement in passing sentence.
- 12.54 The High Court held that a court has to be mindful to confine the actual use of the extrinsic material to interpreting the ordinary meaning of the statutory provision concerned.<sup>187</sup> In particular, a court cannot allow the extrinsic material to take the place of the actual words used in the statute; instead, such material can only be used as aids to interpretation. The court endorsed the words of caution expressed in *Re Bolton; Ex parte Beane*<sup>188</sup> to the effect that "[t]he words of a Minister must not be substituted for the text of the law" and that "the function of the Court is to give effect to the will of Parliament as expressed in the law". In all cases, as we have seen above, the statutory language, and not the extrinsic material, governs. On the facts of *Seow Wei Sin*, the court held that the Ministerial Statement ought not to have affected the sentence passed. This was because the Minister's thinking had not been incorporated in the Enlistment Act and that the court's sentencing ought not to be governed by ministerial policy.<sup>189</sup> Instead, the lower court ought to have directed its mind to, among others, the objectives of the law as expressed in the relevant material, but not a Ministerial Statement made after the statutory provisions concerned had been passed.

<sup>185</sup> *Supra* n 160.

<sup>186</sup> (Cap 93, 2001 Rev Ed).

<sup>187</sup> *Supra* n 160 at [21].

<sup>188</sup> (1987) 162 CLR 514 at 518.

<sup>189</sup> *Supra* n 160 at [24].

### C. Other rules of statutory interpretation

12.55 Apart from the main issues just discussed, there are other rules of statutory interpretation that build upon the purposive approach. These are usually expressed in Latin phrases and operate as default rules. They are default rules insofar as they are presumed to further the statutory purpose. However, it must always be kept in mind that they are subservient to the purposive approach and should be read in that light. Thus, in *Wan Lai Cheng v Quek Seow Kee*,<sup>190</sup> Andrew Phang Boon Leong JA held that the mere invocation of a principle of statutory interpretation – in that case, the rule that a statute should not be construed as effecting any fundamental changes in the common law unless express words to that effect were used – does not, in and of itself, assist the statutory interpretative exercise in the abstract.<sup>191</sup> Similarly, in *Ng Swee Lang v Sassoong Samuel Bernard*,<sup>192</sup> the Court of Appeal eschewed the old distinction between mandatory and directory provisions that was used to determine the validity of an act done in breach of a statutory provision. Rather, the court held that while the distinction was a useful indicator of the nature of the provision concerned, it did not aid substantively in ascertaining the consequences of breach. Finally, in *ACC v Comptroller of Income Tax*,<sup>193</sup> the High Court held that the common law principle that tax statutes should be interpreted strictly in favour of the taxpayer should only be applied if it coincided with the statutory purpose.<sup>194</sup> Ultimately, everything turns on the context, which fundamentally relates to the statutory purpose.

12.56 Below, we look at some examples of default rules of statutory interpretation that have been recently applied by the Singapore courts.

#### (1) Expressio unius principle

12.57 One example of a default rule of statutory interpretation is the *expressio unius* principle, applied by the Court of Appeal in *Public*

190 [2012] 4 SLR 405.

191 *Id.* at [36].

192 [2008] 2 SLR(R) 597.

193 [2011] 1 SLR 1217.

194 *Id.* at [24].

Prosecutor v. where a statute is presumed might have relevant issues. Procedure C all the available criminal cases of Pt IX of the Act as an inclusion of the *expressio unius* by implication that fall within might warrant excluded.<sup>197</sup> This way of a presumption intended the court did further exclude other contemplation if Parliament and those making it no reason why (2) *Ut res magis* v. 12.58 A second example of *ut res magis* v. something to have effect a statutory provision render a provision rule presumes the same statutory this rule is that in vain, as was in *Income Tax*.<sup>199</sup>

195 [2014] 2 SLR 393.

196 (Cap 68, 2012 Rev Ed).

197 *Supra* n 195 at [46].

198 *Supra* n 105.

199 [2013] 4 SLR 741 at [24].

*Prosecutor v Li Weiming*<sup>195</sup> (“Li Weiming”). The rule provides that where a statute sets out specific remedies, penalties or procedures, it is presumed that other remedies, penalties or procedures that might have been applicable are by implication excluded. The relevant issue in *Li Weiming* was whether s 169 of the Criminal Procedure Code 2010<sup>196</sup> set out comprehensively and exhaustively all the available consequences for alleged non-compliance with the criminal case disclosure procedures in the State Courts under Div 2 of Pt IX of the Code. The court held that s 169 could not be read as an inclusionary provision and therefore, by the application of the *expressio unius* principle, additional sanctions were excluded by implication. The court explained that the absence of matters that fall within the same category that is covered by the provision might warrant an inference that these matters were deliberately excluded.<sup>197</sup> To that extent, this furthers the purposive approach by way of a presumption: Parliament is logically presumed to have intended the exclusion of similar additional matters. However, the court did further state that the *expressio unius* principle did not exclude other types of matters that were not within Parliament’s contemplation.<sup>198</sup> This, once again, furthers the statutory purpose: if Parliament did not contemplate the exclusion of other matters, and those matters fit with the general purpose of the statute, there is no reason why they could not be included.

## (2) *Ut res magis valeat quam pereat principle*

- 12.58 A second example of a rule of statutory interpretation is the maxim *ut res magis valeat quam pereat*, which means that it is better for a thing to have effect than to be made void. Applied in the context of a statutory provision, it means that an interpretation that does not render a provision otiose is to be preferred to one that does. This rule presumes that Parliament does not intend for provisions within the same statute to be inconsistent. Another way of expressing this rule is that Parliament shuns tautology and does not legislate in vain, as was put by the High Court in *BFC v Comptroller of Income Tax*.<sup>199</sup>

195 [2014] 2 SLR 393.

196 (Cap 68, 2012 Rev Ed).

197 *Supra* n 195 at [46].

198 *Supra* n 195.

199 [2013] 4 SLR 741 at [47], *supra* n 119.

12.59 Thus, as far as possible, the provisions are to be read harmoniously. This rule was applied by the High Court in *Fatimah bte Kumin Lim*. The issue in that case was whether the High Court's power to grant bail under s 97(1) of the Criminal Procedure Code<sup>200</sup> was circumscribed by s 95(1)(c) of the same statute. This latter provision provides that an accused shall not be released on bail if he has been arrested under a warrant issued under, among others, s 24 of the Extradition Act,<sup>201</sup> which the applicant in *Fatimah bte Kumin Lim* had been. It had been expressly added by Parliament when there had been no restriction on bail for extradition orders earlier. In response to the applicant's argument that s 95(1)(c) did not apply to the High Court, the court considered that ss 95(1)(c) and 97(1) must be read together and s 95(1)(c) thus circumscribed the High Court's power to grant bail. Applying the *ut res magis valeat quan pereat* rule, the court reasoned that s 95(1)(c) must apply to the High Court, otherwise it would be otiose as any person who was the subject of extradition proceedings would simply apply for bail in the High Court.<sup>202</sup>

(3) *Eiusdem generis principle*

12.60 A third example of a rule of statutory interpretation is the *eiusdem generis* canon of interpretation. These words mean "if the same kind or nature" and, when used in the context of statutory interpretation, have been taken to mean that "wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character".<sup>203</sup> This rule was applied by the High Court in *Orchard Central Pte Ltd v Cupid Jewels Pte Ltd*,<sup>204</sup> where the court considered that the words "otherwise dealt with" in s 8(d) of the Distress Act<sup>205</sup> should be read in the context of its preceding words "for the purpose of being carried, wrought, worked up, or otherwise dealt with in the course of his ordinary trade or business", such that the genus of the type of activity encompassed by "otherwise dealt with" should be confined to

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12.61 A similar expression is that the "general in particular". This was in *Orchard Central Pte Ltd v Cupid Jewels Pte Ltd*.<sup>206</sup> The relevant issue concerned incorporation of copyright under s 13 of the Copyright Act.<sup>207</sup> The court held that incorporation of copyright relied on, among other things, s 13(1)(a), which provides that the copyright in a work (if the condition in s 13(1)(b) is met) is rejected this reading is the way to the specific provision must be interpreted. Given that the copyright in a work based on the author's original work had to be living at the time of creation.

12.62 However, it is important to note that the general rule would be trumped by a specific provision held this to be the case in *Orchard Central Pte Ltd v Cupid Jewels Pte Ltd*.<sup>208</sup> Thus, the specific provision Parliament intended to give effect to overrode a prior list of narrow exceptions that did not apply.

(4) *Lex nil frustra facit*

12.63 Yet another example of a rule of statutory interpretation is the principle of *lex nil frustra facit*, or "law does not frustrate". Applied in

200 *Supra* n 196.

201 (Cap 103, 2000 Rev Ed).

202 *Supra* n 96 at [69].

203 Francis Bennion, *supra* n 134 at p 1231.

204 Francis Bennion, *supra* n 134 at p 1231.

205 (Cap 84, 1996 Rev Ed).

206 *Supra* n 96 at [71].

207 [2011] 4 SLR 381.

208 (Cap 63, 2006 Rev Ed).

209 (Cap 1, 2002 Rev Ed).

210 *Supra* n 207 at [65]–[72].

211 [2014] 2 SLR 156.

services of a similar nature.<sup>206</sup> Although the Court of Appeal disagreed with the High Court's interpretation, this case still serves as an illustration of the *ejusdem generis* principle, subject to the statutory purpose otherwise found.

- 12.61 A similar expression of the *ejusdem generis* canon of interpretation is that the "general ordinarily gives way to the special or particular". This was applied by the Court of Appeal in *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd*.<sup>207</sup> The relevant issue in that case was whether non-living "persons" such as incorporated bodies could be an author of a subsisting copyright under the Copyright Act.<sup>208</sup> The lower court had found that incorporated bodies could be such an author. The lower court relied on, among others, s 2 of the Interpretation Act,<sup>209</sup> which provides that the definition of a "person" shall include a company (if the conditions stated in s 2(1) are met). The Court of Appeal rejected this reasoning and, applying the "general ordinarily gives way to the special or particular" rule, held that the word "person" must be interpreted in the specific context of the Copyright Act. Given that the duration of copyright protection had always been based on the author's life expectancy, the court held that authors had to be living persons.<sup>210</sup>
- 12.62 However, it is important to note that the *ejusdem generis* principle would be trumped by the purposive approach. The Court of Appeal held this to be the case in *Cupid Jewels Pte Ltd v Orchard Central Pte Ltd*.<sup>211</sup> Thus, if the statutory purpose did not suggest that Parliament intended to restrict wide words to the genre of items in a prior list of narrower items, then the *ejusdem generis* principle did not apply.

#### (4) *Lex nil frustra facit principle*

- 12.63 Yet another example of a rule of statutory interpretation is the principle of *lex nil frustra facit*, or that the law does nothing in vain. Applied in the context of statutory interpretation, this means

206 *Supra* n 96 at [71].

207 [2011] 4 SLR 381.

208 (Cap 63, 2006 Rev Ed).

209 (Cap 1, 2002 Rev Ed).

210 *Supra* n 207 at [65]–[72].

211 [2014] 2 SLR 156.

that the court avoids an interpretation that produces an absurd result, such as the avoidance of a futile or pointless result or pointless legal proceedings.<sup>212</sup> This is simply a presumption that Parliament acts reasonably and, in doing so, avoids absurd results. Thus, a court giving effect to its intent likewise assumes that its promulgated statutes are not intended to give rise to absurdity. This rule was applied by the High Court in *LaserResearch (S) Pte Ltd (in liquidation) v Internech Systems Pte Ltd*,<sup>213</sup> where it held that O 21 r 2(6) of the Rules of Court,<sup>214</sup> read together with s 299(2) of the Companies Act,<sup>215</sup> ought not to be taken to mean that a creditor had to first seek leave of court to lift the statutory stay under s 299(2) and follow thereafter with an application for an order of court to stay the same action under O 21 r 2(6A). This would not further the purpose of either provision and could only result in duplicity and a waste of judicial time and resources.<sup>216</sup>

(5) *Interpretation of domestic statute in line with state's treaty obligations*

12.64 In the High Court case of *Public Prosecutor v Tan Cheng Yew*,<sup>217</sup> the court accepted the principle of interpretation that the court should interpret a domestic statute in accordance with the state's treaty obligations under international law. This is simply a presumption that Parliament does not intend to act in breach of international law, including specific treaty obligations. However, the court also held that this rule has defined limits. Indeed, in the English Court of Appeal case of *Salomon v Commissioners of Customs*,<sup>218</sup> Lord Diplock said that if the statutory provisions are clear and unambiguous, then they must be given effect to, even if that would result in a breach of a treaty obligation: the reason being that Parliament has the power to break treaties should it desire to do so. However, where the language of the statute is unclear and capable of bearing more than one meaning, then the meaning that promotes the treaty obligations is to be preferred. Embedded within

212 Francis Bennion, *supra* n 134 at pp 1000 and 1001.

213 *Supra* n 207.

214 (Cap 322, R5, 2006 Rev Ed).

215 (Cap 50, 2006 Rev Ed).

216 *Supra* n 207 at [9]–[17].

217 [2013] 1 SLR 1095. See also *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1 at [28].

218 [1967] 2 QB 116 at 143.

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219 [2010] 3 SLR 1108 at [2].

220 [2013] 3 SLR 487.

221 *Id.* at [51].

222 *Id.* at [51].

223 [1983–1984] SLR(R) 2

224 [2002] 2 SLR(R) 633 at

225 K Shanmukhan (ed), *N*

Book Company, 8th Ed,

226 [2012] 4 SLR 1130.

this statement of principle is also the presumption that Parliament intends clear and unambiguous words to be interpreted literally; however, this must now be reconsidered in light of the modern purposive approach, which attributes no such presumption.

- 12.65 A related rule of statutory interpretation is that statutes should be interpreted to promote international comity. This rule is especially relevant in relation to statutes with extra-territorial effects, as was alluded to, but not applied, in the High Court case of *Huang Danmin v Traditional Chinese Medical Practitioners Board*.<sup>219</sup>

(6) *Interpretation of statute so as not to take away pre-existing common law rights*

- 12.66 In *Goldring Timothy Nicholas v Public Prosecutor*,<sup>220</sup> Rajah JA reiterated the fundamental presumption of statutory interpretation that Parliament would not have removed rights pre-existing in common law if there was no express provision or clearly evinced intention to that effect.<sup>221</sup> As the learned judge explained, the rationale behind this presumption is that Parliament is taken not to effect radical changes to the existing law, especially the common law, by a sideway without careful consideration.<sup>222</sup> This presumption has been accepted in numerous Singapore cases, such as the Court of Appeal cases of *Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd v Zahrin bin Rabu*<sup>223</sup> and *Ng Boo Tan v Collector of Land Revenue*.<sup>224</sup>

(7) *Deeming statutory provisions*

- 12.67 Deeming statutory provisions are those that create a statutory fiction. The default rule is that such provisions are given full effect to and carried to their logical conclusions.<sup>225</sup> In *Glengary Pte Ltd v Chief Assessor*,<sup>226</sup> (“Glengary”), the High Court considered what it meant to carry such provisions to their logical conclusions; in

219 [2010] 3 SLR 1108 at [31].

220 [2013] 3 SLR 487.

221 *Id.* at [51].

222 *Id.* at [51].

223 [1983–1984] SLR(R) 212 at [19].

224 [2002] 2 SLR(R) 633 at [76]–[79].

225 K. Shanmukhan (ed), *NS Bindra's Interpretation of Statutes* (Allahabad: The Law Book Company, 8th Ed, 1997) at p 46.

226 [2012] 4 SLR 1130.

particular, since such fictions naturally have consequences that arise from them, to what extent should those consequences be subsumed under the fiction so “deemed”?<sup>227</sup> The court considered that this depended on the purpose of the statutory fiction. Thus, following James LJ’s view in *Ex parte Walton, In re Levy*,<sup>228</sup> the court held that courts are bound to ascertain the purposes and persons the statutory fiction is to be resorted to, and then to apply it accordingly.<sup>229</sup> In other words, the statutory fiction is only to be carried to its logical conclusion within the framework of the purpose for which it was created.<sup>230</sup> Such purpose may in turn be inferred from the inevitability of the consequences flowing from the statutory fiction. If the consequences were inevitable, then it may be presumed that Parliament intended them and will be within the purpose of the statutory fiction.<sup>231</sup>

12.68 In *Glengary*, the court had to consider the extent to which the statutory fiction under the deeming provision concerned, s 2(3)(b) of the Property Tax Act,<sup>232</sup> reached. Section 2(3)(b) created the fiction that the land under property tax assessment is vacant with no buildings. The question was whether committed sales of future buildings to be built there could be disregarded in the assessment of annual value. The court considered that it was not an inevitable consequence of the notional vacant state of land that no committed sales could have taken place. Indeed, the court noted that the notional vacancy only extended to the physical state of land, but did not include legal encumbrances such as ownership and possession of rights over the land. As such, the statutory fiction did not mean that committed sales could be disregarded.<sup>233</sup>

(8) *Non-rules*

12.69 In applying the rules of statutory interpretation, it is also important to recognise non-rules. One example concerns the order of listing in a statutory provision. In *Manjit Singh s/o Kirpal Singh v AG*<sup>234</sup>

227 *Id.* at [31].

228 (1881) 17 Ch D 746.

229 *Id.* at 756–757.

230 *Supra* n 225 at p 50.

231 *East End Dwellings Co Ltd v Finsbury Borough Council* [1952] AC 109.

232 (Cap 254, 2005 Rev Ed).

233 *Supra* n 226 at [40].

234 [2013] 2 SLR 667.

“Manjit Singh s/o Kirpal Singh v AG”  
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to appoint a president “Very Honorable Counsel or a Commissioner”  
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meant that the name on the list.  
In this case, it is a substantive  
*Manjit Singh s/o Kirpal Singh v AG*  
that must suffice.

**IV. Interpretation of other legal documents**

12.70 Having considered the interpretation of other legal documents, then suggests that legal documents the specific context broad issues approach, what kind of

**A. Interpretation of the law**

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235 [Cap 161, 2008 Rev Ed]

236 [2013] 2 SLR 844

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*Sirpal Singh v AG*<sup>234</sup>

(“*Manjit Singh*”), the Court of Appeal had to interpret s 90(1) of the Legal Profession Act,<sup>235</sup> which empowered the Chief Justice to appoint one or more Disciplinary Tribunals, each comprising a president “who shall be an advocate and solicitor who is a Senior Counsel or who has at any time held office as a Judge or Judicial Commissioner of the Supreme Court”. Responding to an argument that because Senior Counsel were mentioned before ex-judges and ex-judicial commissioners, they ought to be given priority in being appointed president, the court held that there was no rule of interpretation that the order of listing in a statutory provision meant that that was the order of priority as to the persons or things on the list.<sup>236</sup> While this was undoubtedly true on the facts of the case, it is possible that the order of listing could at times affect substantive rights conferred by a statute. But all the court ruled in *Manjit Singh* was that there was no general rule to such an effect; that must surely be correct.

#### IV. Interpretation of statutes compared with interpretation of other legal documents

12.70 Having considered the principles relating to statutory interpretation, this Chapter now considers the interpretation of other legal documents, such as Constitutions and contracts. It will then suggest that the broad interpretative approach adopted for all legal documents is largely the same, but with differences made for the specific type of legal document concerned. Indeed, the relevant broad issues are similar, *viz*, what is the proper interpretative approach, whether extrinsic materials can be referred to and, if so, what kind of extrinsic materials.

##### A. Interpretation of Constitutions

12.71 The law relating to the interpretation of constitutions is different in degree from statutory interpretation, but shares certain similarities. Indeed, it has been said that constitutions are *sui generis* and not subject to the ordinary rules of statutory interpretation, as

235 (Cap 161, 2009 Rev Ed).

236 [2013] 2 SLR 844 at [92].

this would be “misleading”.<sup>237</sup> There appears to be several guiding principles.

- 12.72 First, insofar as the proper interpretative approach is concerned, there is emphasis on the “original intent” of the constitutional framers, although different courts may place varying weight on this factor.<sup>238</sup> Related to the first principle, constitutions are purposively interpreted, but with an appreciation that the meaning of “law” has a normative dimension, beyond that of an enacted rule. This does not seem to apply to statutory interpretation; at least, not to an equally great extent.<sup>239</sup>
- 12.73 In relation to the types of materials relevant in the interpretative exercise, there has been a “four walls” doctrine deployed by the Singapore courts to caution reliance on transnational sources, particularly foreign cases with alien values.<sup>240</sup>

#### B. Interpretation of contracts<sup>241</sup>

- 12.74 The law relating to the interpretation of contracts – which is governed in Singapore by the cases of *Zurich Insurance (Singapore) Ltd v B-Gold Interior Design & Construction Pte Ltd*<sup>242</sup> (“*Zurich InsuranceSembcorp Marine Ltd v PPL Holdings Pte Ltd*<sup>243</sup> (“*Sembcorp Marine*”) – is complex but may be summarised for present purposes as follows.
- 12.75 First of all, in terms of framework, the *Zurich Insurance* framework governs contractual interpretation in Singapore. It identifies two distinct questions, *viz* first, what is the admissible extrinsic evidence to interpret contracts and, second, what is the interpretative approach to interpret contracts.
- 12.76 Secondly, the admissible evidence is governed primarily by the Evidence Act and, secondarily, by the common law, provided that

237 Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Singapore: Academy Publishing, 2012) at p 556, citing *Hinds v The Queen* [1977] AC 195 at 212.

238 *Id.* at p 547.

239 *Id.* at p 556.

240 *Id.* at p 561.

241 See generally Goh Yihan, “The New Contractual Interpretation in Singapore: From *Zurich Insurance* to *Sembcorp Marine*” [2013] 2 SJLS 301.

242 [2008] 3 SLR(R) 1029.

243 [2013] 4 SLR 193.

the latter is not extrinsic evidence generally inadmissible in the terms of the common law to interpret contracts. Whether there is extrinsic evidence being relied on will depend on whether it fulfils the four requirements of the *Sembcorp Marine* Practice Directions:

- (b) satisfy all of the requirements which are all substantive;
- (c) may be affected by the types of documents relied on;
- extrinsic evidence suggested above to interpret contracts.

12.77 Where there is extrinsic evidence, such extrinsic evidence is admissible pursuant to the Evidence Act, provided that this is subject to the restrictions in the *Zurich Insurance* that the court may not consider extrinsic evidence unless it is revealed by extrinsic evidence. In *Zurich Insurance* tripartite, the Evidence Act, extrinsic evidence is admissible if it is patent ambiguity or if the intention of the parties is manifestly apparent. If there is latent ambiguity, the court may consider extrinsic evidence pursuant to the Evidence Act, extrinsic evidence is admissible if it is relevant to the question whether the parties had a reasonable person's mind, would have understood the words used in the contract.

12.78 Thirdly, the interpretative approach is contextual. The court must interpret the contract as a reasonable person of ordinary intelligence would have done in the circumstances of the case.

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approach is concerned, “*plain meaning*” of the constitutional place varying weight principle, constitutions are the intention that the meaning is to be given by the plain meaning and that of an enacted statutory interpretation; at

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#### Statutory Interpretation

the latter is not inconsistent with the Evidence Act. Therefore, extrinsic evidence, pursuant to ss 93 and 94 of the Evidence Act, is generally inadmissible to contradict, vary, add to or subtract from the terms of the contract. Extrinsic evidence is generally admissible to interpret contracts specifically for the purpose of ascertaining whether there is an ambiguity. However, extrinsic evidence that is being relied on for this purpose must: (a) be pleaded properly and fulfil the four requirements of civil procedure laid down in *Sembcorp Marine* (and now embodied in the Supreme Court Practice Directions and Subordinate Courts Practice Directions); (b) satisfy all of the *Zurich Insurance* tripartite requirements, which are all substantiated by provisions of the Evidence Act; and (c) may be affected by the attributes of the document – certain types of documents may mandate a lesser consideration of the extrinsic evidence tending to show context (although it was suggested above that this is better viewed as a question of weight).

- 12.77 Where there is no ambiguity revealed by extrinsic evidence admissible pursuant to the *Zurich Insurance* tripartite requirements, such extrinsic evidence may be used to interpret the contract, but this is subject to the interpretative approach laid down in *Zurich Insurance* that the plain meaning governs in such cases. Section 96 of the Evidence Act may also apply to exclude certain types of extrinsic evidence in this regard. Where there is patent ambiguity revealed by extrinsic evidence admissible pursuant to the *Zurich Insurance* tripartite requirements, then, pursuant to s. 95 of the Evidence Act, extrinsic evidence may not be used to resolve the patent ambiguity. While *Sembcorp Marine* suggests that this restriction is exclusively on parties’ subjective declarations of intention, s 95 is not phrased so narrowly. Finally, where there is latent ambiguity revealed by extrinsic evidence admissible pursuant to the *Zurich Insurance* tripartite requirements, then extrinsic evidence is not excluded by ss 97, 98 and 99 of the Evidence Act. Subjective declarations of intention are specifically not excluded to resolve a latent ambiguity, although it is an open question whether such evidence may be considered under s 97.
- 12.78 Thirdly, the interpretative approach to be used is both objective and contextual. The objective principle is concerned with what a reasonable person, with the relevant background knowledge in mind, would have understood the contractual language to mean.

The contextual approach requires the consideration of the relevant background facts as revealed by the extrinsic evidence, although the Evidence Act controls the admissible extrinsic evidence. Because of this, the contextual approach may not apply in as strong a fashion as under English law. Pursuant to this approach, the court will first take into account the plain language of the contract together with relevant extrinsic material that is evidence of its context. Then, if in the light of this context, the plain language of the contract becomes ambiguous (ie, it takes on another plausible meaning) or absurd, the court will be entitled to put on the contractual term in question an interpretation which is different from that demanded by its plain language. Similar to statutory interpretation, existing canons of interpretation apply, but these are more of guides than absolute rules.

### C. Unified interpretative approach?<sup>244</sup>

12.79 We have seen that there are some similarities between the interpretations of various legal documents. As such, Rajah JA's suggestion in *Zurich Insurance* that "the adoption of the contextual approach to contractual interpretation is conceptually broadly similar to the purposive approach which our courts now adopt vis-à-vis statutory interpretation"<sup>245</sup> hints at the possibility of a unified interpretative approach. However, such a unified approach is not without difficulties. To contain the discussion, we will examine these difficulties by comparing contracts and statutes, but the analysis applies broadly, if not equally, to other kinds of non-contractual documents. Justice Kirby, writing extrajudicially, identifies three fundamental differences between contracts and statutes which he argues, accounts for the differences in the interpretation rules of the documents.<sup>246</sup> First, a contract is "created" differently from a statute. The former is an agreement between relatively small number of people; a statute is, however, an "agreement" only in the broadest political sense, and one that is entered into between many more parties. It follows that there will be few available extrinsic materials that inform the meaning of

244 See generally Goh Yihan and Yip Man, "Marley v Rawlings: Reflections from Singapore" [2014] SJLS 218.

245 *Supra* n 242 at [133].

246 The Hon Justice Michael Kirby, "Towards a Grand Theory of Interpretation: The Case of Statutes and Contracts" (2003) 24 Statute LR 95.

contracts. By contrast, statutes are often accompanied by explanatory memoranda which accompany the statutory text.<sup>247</sup>

12.80 Secondly, a statute has a longer duration than a contract, which makes it inappropriate to the strict "intentional" approach. It might be more suited to the ideas of justice and statutory provisions reflecting the original intention of the legislature.

12.81 Finally, it is said that contracts and statutes are in different forms that are available for different purposes. Two kinds of documents could provide relief: equitable remedies being more limited.<sup>250</sup> Unless the legislature is able to overcome the deficiencies of reform or more extensive legislation, the "legitimacy" of the legal system is at stake.

12.82 Whilst Justice Kirby's argument does not mean that unification could be abandoned at an overarching level and retained at a lower level. And it is the general principles on which we rely that justify a unified approach.

247 *Ibid.*

248 *Ibid.* The notion that statutory interpretation should reflect the intent of its original drafters finds support in the words of Justice Antonin Scalia of the United States Supreme Court in *Text and the Rule of Interpretation: Federal Courts and the Law* (Oxford University Press, 1997).

249 *Id.* at 107.

250 *Id.* at 108–109.

251 *Id.* at 109.

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contracts. By contrast, there are many public documents, such as explanatory memoranda and the ministerial second reading speech, which accompany the promulgation of a statute and elucidate the statutory text.<sup>247</sup>

- 12.80 Secondly, a statute has a wider scope and longer anticipated duration than a contract. Statutory provisions tend to therefore take on a broader operation and a wider meaning. This in turn makes it inappropriate to restrict the meaning of the statutory text to the strict “intentions” of the original drafters,<sup>248</sup> a technique that might be more suited for a contract. In particular, contemporary ideas of justice and fairness might influence the interpretation of statutory provisions, and provide cause for departing from the original intention of the drafters.<sup>249</sup>
- 12.81 Finally, it is said that different interpretative rules for contracts and statutes are in part necessitated by the different remedies that are available for correcting the linguistic deficiencies of the two kinds of documents. Justice Kirby observed that the courts could provide relief from contractual language via rectification or equitable remedies but in the case of a statute, the remedies are more limited.<sup>250</sup> Unless the statutory language can be “construed” to overcome the deficiency naturally, the only “remedy” is statutory reform or more exceptionally, repeal, owing to the “democratic legitimacy” of the legislative source.<sup>251</sup>
- 12.82 Whilst Justice Kirby’s observations are all very well made, this does not mean that a unified approach is impossible. Perhaps, unification could be approached on two levels: a general, overarching level and a more detailed and specific application level. And it is the general level that we are concerned with here, and on which we think there are sufficient commonalities to justify a unified approach. Indeed, a highly significant work by

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.* The notion that statutory interpretation is dependent on the “original intention” of its original drafters finds one of its strongest modern day supporters in Justice Antonin Scalia of the United States Supreme Court: see Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton: Princeton University Press, 1997).

<sup>249</sup> *Id.* at 107.

<sup>250</sup> *Id.* at 108–109.

<sup>251</sup> *Id.* at 109.

Barak presents such a possibility. Barak persuasively argues for a universal theory of interpretation – the purposive approach – to all legal documents.<sup>252</sup> The key to understanding Barak's theory is to imagine a range of “intents” – from the “subjective intent” (which deduces the meaning of the text from the intention of the drafter) to the “objective intent” (which deduces the meaning of the text from fundamental principles of the legal system). A different type of legal document would therefore have a different starting point on this range of “intents”, with the appropriate interpretation to be taken accordingly.<sup>253</sup> Thus, the interpretation of statutes (especially constitutions) may have a different conception of the “purposive approach” and may disregard the actual intent of its drafters in favour of some broader notion of policy. On the other hand, the interpretation of contracts or wills will start with another conception of the “purposive approach” and place the intention of the drafters (as objectively determined) at the forefront of its consideration.<sup>254</sup>

- 12.83 Whether the drafter is a testator, contracting party or Parliament, he or she entered into the relevant document with some intention. If it is accepted that the courts' duty is to uphold that intention, then it is obvious why the interpretative approach, on a general level, is largely the same. The cases are united in the view that interpretation is an effort to understand the meaning of the text and give effect to the intention within. In respect of contractual interpretation, this point is underscored by the Court of Appeal's judgment in *Sembcorp Marine*: contractual interpretation refers to the “process of ascertaining the meaning of expressions in a contract”.<sup>255</sup> The same is true for statutory interpretation – the dominant interpretative approach used by the Singapore courts is the purposive approach as mandated by s 9A(1) of the Interpretation Act. The value of such a general approach must not

<sup>252</sup> *Supra* n 106. See also Gabriela Shalev, “Interpretation in Law: Chief Justice Barak’s Theory” (2002) 36 Israel Law Review 123 and Thomas A. Balmer, “What’s a Judge To Do?” (2006) 18 Yale Journal of Law and the Humanities 139. Also see more generally a discussion on the difficulties with the concept of statutory purpose: Neil Duxbury, *Elements of Legislation* (Cambridge: Cambridge University Press, 2012) at chapter 4.

<sup>253</sup> Gabriela Shalev, *ibid.*

<sup>254</sup> *Ibid.*

<sup>255</sup> *Supra* n 243 at [27]. See also *Precise Development Pte Ltd v Holcim (Singapore) Pte Ltd* [2010] 1 SLR 1083 at [32].

be discounted. It is the starting point of interpretation, a general rule that applies to the application of rules of interpretation. It is based on such broad notions as the intention of each specific branch of law, which may be said to be based on the general principles of contract law.

- 12.84 Thus, this general rule of interpretation must be applied to each type of document, taking into account of the nature of the document in question and the intentions of the drafters concerned, the statutory purpose and the intentions. But from a general perspective, they may differ, for example, between a will and a formal contract. This is because the general rules in relation to interpretation apply to the general starting point of interpretation. Thus, to interpret a will and a formal contract and a statutory provision, the latter should generally take into account the context and underlying purpose contained within it. The purpose of a formal contract is to ensure that the parties to the contract determine their mutual rights and obligations just the contract itself. In contrast, the Court of Appeal has held that in a case concerning a statutory provision, the Court of Appeal cautions that the external context and the purpose where statutes are enacted must be considered in the separation of powers. The meaning of statutory provisions such as those relating to the interpretation of a statute is both mandatory and permissive. Provisions such as

<sup>256</sup> [2012] 3 SLR 125.

<sup>257</sup> *Id.* at [35]; see also York [2012] 3 SLR 1142 at [19].

persuasively argues for a purposive approach – to all things Barak’s theory is to “objective intent” (which intention of the drafter) the meaning of the text (system). A different type of different starting point appropriate interpretation interpretation of statutes different conception of the the actual intent of its of policy. On the other will start with another and place the intention at the forefront of its

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n Law: Chief Justice Barak’s A. Balmer, “What’s a Judge manities 139. Also see more pt of statutory purpose: Neil dge University Press, 2012)

be discounted. It first informs the purpose to the whole exercise of interpretation, and this purpose then guides the more specific application of rules. Indeed, various branches of law are founded on such broad notions, with more specific guidance applied to each specific branch of law. For example, the law of contract may be said to be based, very generally, on the effecting of promises, but that general guidance is then specifically applied in each area of contract law.

- 12.84 Thus, this general purposive interpretation approach is then applied to each type of document with specific guidelines, taking into account of the differences in the nature and purpose of the document in question. For example, even where contracts are concerned, the starting point is of course to discern the parties’ intentions. But from this starting point, the detailed rules might differ, for example, between a negotiated contract and a standard form contract. This is what we mean when we say that specific rules in relation to types of documents will differ, even if the general starting point should always be to discern the parties’ intention. Thus, to return to our example concerning a negotiated contract and a standard-form contract, the interpretation of the latter should generally be guided by restrictive examination of the context and underlined by a presumption that all the terms are contained within it. This is because the purpose of a standard form contract is to ensure expediency in payment, and allow the parties to determine their rights under the contract quickly by looking at just the contract itself. These considerations were indeed applied by the Court of Appeal in *Master Marine AS v Labroy Offshore Ltd*,<sup>256</sup> a case concerning a performance bond, and upon which, the Court of Appeal cautioned judicial restraint in the examination of the external context and extrinsic evidence.<sup>257</sup> As we have seen, where statutes are concerned, the constitutional framework and the separation of powers restrict interpreters from stretching the meaning of statutory provisions. The purposive interpretation of a statute is both mandated as well as circumscribed by statutory provisions such as s 9A of the Interpretation Act.

<sup>256</sup> [2012] 3 SLR 125.

<sup>257</sup> *Id.* at [35]; see also *York International Pte Ltd v Volta Limited* [2013] 3 SLR 1142 at [19].

12.85 A unified approach on a general level merits full consideration on another occasion and within a more expansive project. The point that is being made here is that one ought not to hastily dismiss the possibility of a unified approach. A unified approach has several merits, the chief of which is directing the courts' focus on the overriding goal to give effect to the drafter's intention, and to appreciate that whatever nature of the document, language is an expression, but not necessarily the most accurate gauge, of the drafter's intent. This helps the courts to develop rules that will give effect to the overriding objective, and only develop different rules that are necessary to take the differences into account. The general approach is then supplemented by specific guidelines particular to each type of legal document.

## V. Conclusion

12.86 Leaving aside the speculative question of whether a unified interpretative approach is possible for all legal documents, this Chapter has provided an update on the 1993 statutory reform on statutory interpretation in Singapore, shedding light on the remarkable transformation in the approach taken by the Singapore courts towards statutory interpretation. From an initially cautious approach, the Singapore courts have now adopted an extremely expansive view of the effects of the 1993 reform. This article has outlined some problems for the future, along with the attendant suggested solutions, for further consideration. As concluded by the same author in his previous article,<sup>258</sup> the future for statutory interpretation in Singapore looks bright indeed.

### Further readings

1. Robert Beckman & Andrew Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69
2. Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] SJLS 152
3. Goh Yihan, "Statutory Interpretation in Singapore: 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97

<sup>258</sup> Goh Yihan, "Statutory Interpretation in Singapore: 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97, *supra* n 1.

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4. Goh Yihan, "A Compendium of Statutory Interpretation in Singapore" (2008) 21 SAcLJ 1
  5. Goh Yihan, "Two Centuries of Statutory Interpretation in Singapore: An Outdated Statutory Interpretation" (2009) 21 SAcLJ 1

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4. Goh Yihan, "A Comparative Account of Statutory Interpretation in Singapore" (2008) 29 Statute LR 195
  5. Goh Yihan, "Two Contrasting Approaches in the Interpretation of Outdated Statutory Provisions" [2010] 2 SJLS 530

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