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13. CRIMINAL LAW

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I. Introduction

13.1 This review is in three parts. These will examine, respectively, cases that involved offences under the Penal Code,[2] the Misuse of Drugs Act[3] ("MDA") and offences under other statutes.

II. Penal Code

A. Elements of an offence of dishonest misappropriation under section 403 of the Penal Code

13.2 Section 403 of the Penal Code states:

> **Dishonest misappropriation of property**
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> **403.** Whoever dishonestly misappropriates or converts to his own use movable property, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.

13.3 In *Ho Man Yuk v Public Prosecutor*,[4] the Court of Appeal held that to make out an offence under s 403 of the Penal Code, it was *not* necessary to prove that the accused person had an innocent or neutral

1 Any views expressed in this chapter are the authors' own views, and do not represent the views of the Attorney-General's Chambers.
2 Cap 224, 2008 Rev Ed.
3 Cap 185, 2008 Rev Ed.
4 [2019] 1 SLR 567.

state of mind when he or she first came into possession of the property in question.

13.4 This case arose from a criminal reference brought by an applicant who had been convicted under s 403 of the Penal Code. The applicant was a member of a rewards programme at a casino. As part of a promotion, the casino allowed certain members (including the applicant) to redeem a limited number of Free Play Credits at electronic kiosks within the casino. These credits had no monetary value in themselves, but could be used for gambling on the casino's gambling machines. As a result of a technical system error at one of the electronic kiosks, the applicant's account was credited with $800 worth of free play credits (instead of the $100 to which she was entitled). The applicant then used the credits to gamble at electronic roulette machines and cashed in her winnings. The applicant also got two friends to join her at the casino, and together they exploited the same technical error to obtain a total of 1,029,300 free play credits using the applicant's membership card. The three of them used these credits to gamble and encashed their winnings for a total of $875,133.56.

13.5 The applicant was convicted on one count of abetment by conspiracy to dishonestly misappropriate moneys under s 403 read with s 109 of the Penal Code (amongst other charges). She was granted leave to refer the following question to the Court of Appeal:

> Whether a conviction for dishonest misappropriation under s 403 of the [Penal] Code can be made out only if the accused person had an innocent or neutral state of mind when he first came into possession of the property in question.

13.6 The applicant contended that the question should be answered in the affirmative. She claimed that, since she had come into possession of the relevant property with an intent that was dishonest (rather than innocent or neutral) from the very outset, she had not committed the offence under s 403 of the Penal Code. The Prosecution argued that the question should be answered in the negative.

13.7 Applying the principles of statutory construction laid down in the minority judgment in *Attorney-General v Ting Choon Meng*[5] and *Tan Cheng Bock v Attorney-General*[6] ("*Tan Cheng Bock*"), the Court of Appeal answered the question in the negative.[7]

5 [2017] 1 SLR 373.
6 [2017] 2 SLR 850.
7 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [26].

13.8 First, on a plain reading of s 403 of the Penal Code, the accused person's state of mind at the time of initial possession – whether innocent, neutral, or dishonest – was irrelevant to a conviction under that provision. The concurrence principle only required that the accused be dishonest *at the time he misappropriated or converted* the property to his own use.[8]

13.9 Second, the Court of Appeal then turned to the context of s 403. On the whole, this suggested that initial innocent possession was *not* a requirement for dishonest misappropriation:

> (a) On balance, the illustrations and explanations to s 403 neither supported nor denied the applicant's interpretation of s 403. In any event, s 7A of the Interpretation Act[9] provided that illustrations should *not* be taken as exhaustive of the scope of a provision.[10]
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> (b) The Court of Appeal rejected the Prosecution's argument that the text and illustration of s 404 of the Penal Code showed that there was no requirement of initial innocent possession. Section 404 was neutral because it could be interpreted as requiring dishonesty to be assessed at either the time of misappropriation or conversion, *or* the time the property was first taken possession of.[11]
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> (c) Contrary to the applicant's contention, there was no need to read an innocent possession requirement into s 403 of the Penal Code in order to distinguish it from other property offences. The applicant supplied no authority or good reason for why these offences should not overlap.[12]
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> (d) However, the Legislature could not have intended innocent possession to be an implicit requirement of s 403 for three reasons:
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> > (i) It would be unusual to require an offender to *not* possess a particular mental state (that is, dishonesty) at a particular point in time. No other property offence imposed a similar "negative" or exonerative *mens rea* requirement. There was no apparent reason why a presumptively exonerative fact should be an element of a property offence.[13]

8 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [33] and [40].
9 Cap 1, 2002 Rev Ed.
10 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [47] and [52].
11 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [56].
12 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [58]–[60].
13 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [62] and [63].

(ii) The precise contours of the definition of "innocent possession" were unclear. The terms "neutral" and "innocent" were ambiguous, and might not be mutually exclusive with "dishonesty". A person who was initially neither "innocent" nor "dishonest", but who subsequently misappropriated the property dishonestly, might escape criminal liability altogether.[14]

(iii) Even if "innocence" was defined as the converse of honesty (that is, "not dishonest"), there might be a lacuna in the law. Theft under s 378 of the Penal Code required property to be taken *out of the possession* of a person, whereas dishonest misappropriation under s 403 did not. If s 403 required a person to be "innocent" at the time he took possession of the property, then no criminal liability would attach to (A) a person who found property which was not in anyone's possession, and dishonestly intended to keep it from the outset; or (B) a person who actively sought opportunities to appropriate items misplaced or lost by others, with the intent to keep them for his own use. This result would be absurd.[15]

13.10 Third, the history of the legislation showed plainly that the drafters of the Indian Penal Code – from which the Penal Code had originated – intended that initial innocent possession should not prevent a subsequent dishonest misappropriation or conversion from constituting an offence. It seemed incongruous to infer an intention to also make initial innocent possession an ingredient of the offence.[16]

13.11 The Court of Appeal also analysed various academic texts, as well as decisions of the Indian and Sri Lankan courts. The Indian cases and the academic texts were not particularly useful. However, the Sri Lankan Supreme Court decision in *Walgamage v The Attorney-General*[17] was salient and persuasive authority against the innocent possession requirement.[18]

13.12 Finally, given the court's conclusion (from the text, context, history and purpose of the provision) that innocent possession was not a requirement under s 403 of the Penal Code, there was no room to apply

14 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [64] and [65].
15 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [68] and [71]–[74].
16 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [83].
17 [2000] 3 Sri LR 1.
18 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [94], [98] and [104] and [111].

either the rectifying construction or the strict construction rule in the applicant's favour.[19]

B. Whether a person who refuses to sign a statement recorded from him under section 22 of the Criminal Procedure Code commits an offence under section 180 of the Penal Code

13.13 In *Wham Kwok Han Jolovan v Public Prosecutor*[20] ("*Jolovan Wham*"), the High Court held that an accused person who refuses to sign a statement recorded from him under s 22 of the Criminal Procedure Code[21] ("CPC") commits an offence under s 180 of the Penal Code, which states:

> **Refusing to sign statement**
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> **180.** Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to $2,500, or with both.

13.14 The appellant had been convicted under s 180 of the Penal Code for refusing to sign a statement recorded from him under s 22 of the CPC, and sentenced to a $1,200 fine (in default, six days' imprisonment). He appealed against his conviction and sentence. (He also appealed against his conviction and sentence against a charge for organising a public assembly without a permit, which is discussed below.)[22]

13.15 First, the appellant argued that a police officer recording a statement pursuant to s 22 of the CPC was not a person "legally competent to require" the maker of the statement to sign it. The version of s 22(3) of the CPC then in force[23] stated:

> A statement made by any person examined under this section must —
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> (*a*) be in writing;
>
> (*b*) be read over to him;

19 *Ho Man Yuk v Public Prosecutor* [2019] 1 SLR 567 at [115] and [117].
20 [2019] SGHC 251.
21 Cap 68, 2012 Rev Ed.
22 See para 13.87 below.
23 Section 22(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) has since been amended by the Criminal Justice Reform Act 2018 (Act 19 of 2018) to introduce audiovisual recording, but these amendments are unlikely to affect the court's legal analysis of statements recorded in writing.

(*c*) if he does not understand English, be interpreted for him in a language that he understands; and

(*d*) be signed by him.

13.16 The High Court held that a police officer was legally competent to require the statement-maker to sign his statement. The objective of requiring statements to be signed was to ensure their accuracy and reliability. It was meaningless to require the police officer to obtain the signature of the statement-giver unless the officer also had the power to require the statement-giver to sign it.[24]

13.17 Secondly, the appellant pointed out that s 22(2) of the CPC accorded the statement-maker a privilege against self-incrimination. He argued that a police officer was not legally competent to require a person to sign an incriminatory statement. The High Court disagreed: s 22(3)(*d*) did not distinguish between incriminatory and non-incriminatory statements. Though a person had the right not to say anything incriminating, if he waived this right and gave a self-incriminatory statement, there was no reason why he should not be required to sign it.[25]

13.18 Since the police officer who recorded the appellant's statement pursuant to s 22 of the CPC was legally competent to require him to sign it, the appellant had committed an offence under s 180 of the Penal Code. His conviction was affirmed.

III. Misuse of Drugs Act

A. Doctrine of wilful blindness and its interaction with the statutory presumptions in the Misuse of Drugs Act

13.19 In *Adili Chibuike Ejike v Public Prosecutor*[26] ("*Adili*"), the Court of Appeal discussed the nature and scope of the doctrine of wilful blindness, and its interaction with the presumption of possession in s 18(1) of the MDA.

13.20 The appellant had travelled from Nigeria to Singapore. At customs, his suitcase was inspected and found to conceal, within its inner lining, two taped packages found to contain not less than 1,961g of methamphetamine. He was charged with an offence under s 7 of the MDA for importing not less than 1,961g of methamphetamine into

24 *Wham Kwok Han Jolovan v Public Prosecutor* [2019] SGHC 251 at [62] and [63].
25 *Wham Kwok Han Jolovan v Public Prosecutor* [2019] SGHC 251 at [64].
26 [2019] 2 SLR 254.

Singapore. This required the Prosecution to prove (a) possession of the drugs; (b) knowledge of the nature of the drugs; and (c) intentional bringing of the drugs into Singapore without prior authorisation. The former two elements were in issue.[27]

13.21 The Prosecution invoked the presumptions under ss 18(1) and 18(2) of the MDA. It was undisputed that the appellant was in possession of the suitcase containing the drug bundles, and therefore presumed to be in possession of the drug bundles pursuant to s 18(1) of the MDA. Assuming the appellant possessed the drug bundles, he was then presumed to know the nature of the drugs (that is, methamphetamine) under s 18(2) of the MDA. The Prosecution submitted that this presumption was unrebutted because the appellant was wilfully blind. In particular, the circumstances surrounding the entire incident would have aroused the appellant's suspicion that the suitcase contained something illegal, yet he failed to make enquiries or take reasonable steps to ascertain its contents.

13.22 The Defence accepted that the accused was in possession of the methamphetamine by virtue of s 18(1) of the MDA, but argued that the presumption under s 18(2) of the MDA was rebutted because the appellant did not know that the suitcase contained methamphetamine. In his statements to the police, the appellant had said that two acquaintances in Nigeria had instructed him to deliver the suitcase together with some money to an unspecified person in Singapore. The appellant claimed that he had not packed the suitcase himself, did not know what it contained or why he had to deliver it, did not think about its contents, and did not ask his acquaintances about its contents.[28] At trial, the accused testified that one of these acquaintances had both *shown* and *told* him that the suitcase contained only clothes and shoes.[29]

13.23 The High Court rejected the appellant's evidence, convicted him of the charge and sentenced him to the mandatory death penalty. The Court of Appeal allowed his appeal and acquitted him of the charge.

13.24 First, the Court of Appeal clarified the meaning of "possession" of a drug for the purposes of the MDA. In order to "possess" a drug, a person must know that he has possession, custody or control of the thing that turns out to be the drug (though he need not know that the thing is in fact a drug). If the drugs had been hidden in the appellant's suitcase without the appellant's knowledge, such that he did not know

27 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [64].
28 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [12]–[13] and [19].
29 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [19].

they were there, then he could not be said to have been "in possession of" the drugs.[30] The Defence ought not to have conceded below that the accused possessed the methamphetamine, since this was inconsistent with the case it advanced.[31]

13.25 Second, the court considered whether the appellant could be said to have *known* of the existence of the drugs within his suitcase. "Knowledge" comprised both actual knowledge and wilful blindness, which was the legal equivalent of actual knowledge. The term "wilful blindness" had been used in two distinct senses in the case law:

> (a) The first was the *evidential* sense, where the accused person's suspicion and deliberate refusal to inquire were treated as evidence that sustained an inference that the accused person had *actual knowledge* of the fact in question. On this view, the circumstances were so suspicious that any innocent person would have taken steps to investigate the true position, and the accused's failure to do so persuaded the court that he actually *did* know the truth.[32] This was properly described as actual knowledge *simpliciter*, rather than as "wilful blindness", which denoted a state of knowledge falling short of actual knowledge.[33]
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> (b) The second was the *extended* conception of wilful blindness, which described a mental state falling short of actual knowledge but which was treated as its legal equivalent. An accused person who did not in fact know the true position, but sufficiently suspected it and deliberately refused to investigate in order to avoid confirming his own suspicions, should, in certain circumstances, be treated as though he did know. The doctrine of wilful blindness in this sense was necessary to deal with accused persons who attempted to avoid liability by carefully skirting actual knowledge, thereby undermining the administration of justice.[34]

13.26 For an accused person to be found to be wilfully blind in the extended sense, three requirements had to be proved:

> (a) First, he must have had a clear, grounded and targeted suspicion of the fact to which he was said to be wilfully blind. The accused person must have himself personally suspected that fact; any reference to what a reasonable person would have done

30 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [31], [34] and [40].
31 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [28(a)].
32 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [45] and [46].
33 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [50] and [93].
34 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [47]–[49].

was relevant only as an evidential tool for the court to assess the accused person's subjective state of mind. Further, the suspicion must be firmly grounded and targeted on specific facts; mere untargeted or speculative suspicion was insufficient.[35]

(b) Second, there must have been reasonable means of inquiry available to the accused person which, if taken, would have led him to discovery of the truth. The means of inquiry which the accused person was expected to take should generally be reliable, appropriate in the circumstances (including the extent to which his suspicions had been raised), and capable of leading him to the truth within a reasonable period of time.[36] Where an accused person took *some* steps to investigate the nature of the item in his possession, whether he could nevertheless be said to have been wilfully blind would depend on the reasonableness and adequacy of the steps taken, which in turn depended on all the relevant facts of each case.[37]

(c) Third, the accused person must have deliberately refused to pursue the means of inquiry in order to avoid such adverse legal consequences as might attach to his knowledge of the fact in question. He must have been motivated by a desire to avoid inculpatory knowledge, and not by, for instance, indolence, negligence or embarrassment. This distinguished wilful blindness from recklessness and negligence. Given the difficulty of proving an accused person's mental state, the inquiry into whether he deliberately refused to inquire *so as to avoid knowledge* would frequently be a matter of inference.[38]

13.27 The Court of Appeal then turned to consider the content of the presumption in s 18(1) of the MDA. Section 18(1) of the MDA presumed that the accused person was knowingly in possession of the thing that turned out to be a drug. To be precise, s 18(1) presumed that the accused had *actual knowledge* of the presence of the drug. It did not entail a presumption that the accused person was wilfully blind to this fact. This was because the presumptions in s 18 of the MDA were presumptions of fact, whereas wilful blindness was a legal construct and a question of mixed law and fact involving an intensely fact-sensitive inquiry, which could not ordinarily be the subject of an evidential presumption. Wilful

35 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [51(a)], [53], [54] and [83(a)].
36 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [51(b)], [56], [57] and [83(b)].
37 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [61].
38 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [59], [60] and [83(b)].

blindness therefore could not be presumed but would have to be proved by the Prosecution beyond reasonable doubt.[39]

13.28 In this case, the Prosecution had accepted that the appellant did not actually know that the drugs were in his physical custody. Its case was that he was wilfully blind to the presence of the drugs. The Prosecution therefore could not rely on the presumption in s 18(1) of the MDA, which was contrary to its own case.[40]

13.29 The Prosecution also failed to prove wilful blindness because it could not establish the second element of wilful blindness. There were no reasonably available means for the appellant to have discovered the drug bundles. Since the drug bundles were hidden within the inner lining of the suitcase, the appellant would not have found them even if he had opened the suitcase to check. Even if the appellant had asked his acquaintances about the contents of the suitcase, they would not have told him about the hidden drug bundles.[41] The Prosecution had therefore failed to prove that the appellant was in possession of the drug bundles, and he was acquitted.

13.30 It should be noted that the court confined its analysis of the doctrine of wilful blindness, and its interplay with the statutory presumptions in the MDA, to the context where the fact in issue was whether the accused knowingly possessed a drug. The court's analysis – particularly regarding the second element of wilful blindness (reasonable means of inquiry) – might be different when the fact in issue was whether the accused person knew the nature of the drug.[42] The court observed provisionally that, where an accused person was found to be in possession of the drug, he would likely be found to be wilfully blind to the nature of that drug if his suspicions were sufficiently aroused and he decided not to check because he either did not want to know the truth or was indifferent to the nature of what he was in possession of.[43]

39 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [66], [70], [71] and [98].
40 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [28(b)], [74]–[79], [82] and [100].
41 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [84]–[87].
42 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [42], [52], [62] and [72].
43 *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [62] and [95].

B. Application of Adili Chibuike Ejike v Public Prosecutor *in the context of whether the accused knew the nature of the drugs*

13.31 In *Public Prosecutor v Imran bin Mohd Arip*,[44] the High Court had the opportunity to apply the doctrine of wilful blindness to a context where the question was whether an accused person knew the nature of drugs which were found to be in his possession. One of the accused persons, Pragas Krissamy, had helped to deliver a white plastic bag containing two bundles of heroin to another person. Pragas claimed that he believed the two bundles contained contraband cigarettes. The High Court rejected his claim and found that he had been wilfully blind to the fact that they contained heroin.

13.32 First, the High Court found that Pragas would have had a clear, grounded and targeted suspicion of what he was to deliver. The amount he was paid for the transaction was much higher than what he could have expected to be paid for delivering contraband cigarettes. Further, the items weighed more than cigarettes would have, and there was a surreptitious and elaborate system of delivery which was wholly out of keeping with the delivery of contraband cigarettes.[45]

13.33 Second, the High Court found that Pragas had reasonable means of inquiry. The parcel containing drugs had been placed in the backpack that he was carrying, but he did not check its contents despite having many opportunities to do so, and despite many signs that alerted him to the nature of its contents.[46]

13.34 Third, the High Court found that Pragas had deliberately refused to pursue this means of inquiry, and this was plainly borne of a deliberate desire to avoid legal liability.[47]

C. Whether "bailee" traffics in drugs by returning them to "bailor"

13.35 In *Ramesh a/l Perumal v Public Prosecutor*[48] ("*Ramesh Perumal*"), the Court of Appeal revisited the issue of whether one who takes custody of drugs (a "bailee"), intending to return the drugs to the person who entrusted him with the same (a "bailor"), commits trafficking in the drugs when he returns the drugs to the bailor. In three previous cases, the

44 [2019] SGHC 155.
45 *Public Prosecutor v Imran bin Mohd Arip* [2019] SGHC 155 at [74] and [75].
46 *Public Prosecutor v Imran bin Mohd Arip* [2019] SGHC 155 at [76] and [77].
47 *Public Prosecutor v Imran bin Mohd Arip* [2019] SGHC 155 at [78].
48 [2019] 1 SLR 1003.

Court of Appeal had held that the bailee would be liable for trafficking. However, in *Ramesh Perumal*, the Court of Appeal departed from these decisions, holding that the bailee would not be so liable.

13.36 *Ramesh Perumal* involved two offenders who worked as drivers, one Chander and one Ramesh. On the day of their arrests, Chander drove Ramesh into Singapore in a lorry. At some point in the journey, Chander gave Ramesh a bag containing bundles of drugs ("the D bundles"). Chander drove them to a parking lot where a second lorry was parked. There, Ramesh alighted from the first lorry with the bag and boarded the second lorry. Ramesh and Chander then drove off separately.

13.37 Later that day, Chander was arrested by officers of the Central Narcotics Bureau ("CNB"). Minutes later, Ramesh arrived at the scene. Upon alighting from his lorry, he too was arrested by the CNB officers, who searched Ramesh's lorry and seized the bag containing the D bundles.

13.38 Chander was charged with trafficking the D bundles by giving them to Ramesh (as well as two other charges in relation to different bundles of drugs). Ramesh faced one charge of possessing the D bundles for the purpose of trafficking. The High Court convicted Chander and Ramesh on all the charges against them. The High Court also found that both Chander and Ramesh were couriers, and, since the Prosecution had issued both accused persons certificates of substantive assistance, sentenced them both to life imprisonment and caning. The pair then appealed against their convictions and sentences.

13.39 The Court of Appeal affirmed all the convictions *except* Ramesh's, which is the focus here.

13.40 The court prefaced its analysis by reiterating that the presumption of trafficking in s 17 of the MDA could not be applied together with either of the presumptions in ss 18(1) and 18(2) of the MDA. This was because s 17 applied only where possession and knowledge of the nature of the drug were *proved*, not *presumed*.[49]

13.41 The charge against Ramesh had three elements: (a) possession of the drug; (b) knowledge of its nature; and (c) possession for the purpose of trafficking. The court was satisfied that the element of possession had been established beyond a reasonable doubt.[50] However, there was little proof that Ramesh knew that the D bundles contained diamorphine specifically. The Prosecution therefore had to rely on the presumption

49 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [57]–[58].
50 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [64].

of knowledge of the nature of the drug under s 18(2) of the MDA.[51] The court found that Ramesh had failed to rebut the presumption, and he was therefore found to have known the nature of the drugs.[52]

13.42 It followed from the Court of Appeal's analysis that the Prosecution could not rely on the presumption of trafficking under s 17 of the MDA to make out the charge against Ramesh, because that presumption only applied if knowledge of the nature of the drug was *proved* (not presumed).[53] The court therefore turned to consider whether the Prosecution had proved beyond a reasonable doubt that Ramesh had possessed the D bundles *for the purpose of trafficking*.

13.43 In this regard, the Prosecution had two strings to its bow. Its primary argument was that Ramesh had possessed the D bundles for the purpose of delivering them to a person in Bedok, based on Chander's evidence to that effect. The Court of Appeal rejected this argument for two reasons:

> (a) The first was procedural fairness. The court held that the Prosecution had shifted its position, in the middle of trial, on an important aspect of its case: the time when Chander had a discussion with Ramesh during which the latter had allegedly agreed to help to deliver the D bundles. This shift occurred only after Ramesh's counsel had mounted a serious challenge to the veracity of Chander's account; Ramesh's counsel might have taken a very different approach when cross-examining Chander – and perhaps also while leading evidence from Ramesh – if the Prosecution had adopted its ultimate position from the outset.[54]
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> (b) Second, there were problems with the narrative that the Prosecution eventually settled on, which was that the crucial discussion took place while Chander and Ramesh were en route to Singapore.[55] These created a reasonable doubt as to whether Ramesh had agreed to deliver the D bundles at Chander's request. In particular, there was a reasonable possibility that Ramesh was, as he claimed, merely safekeeping the D bundles, with the intention of returning them to Chander. Ramesh had consistently asserted this in his statements to the CNB.[56]

51 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [66]–[70].
52 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [70].
53 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [71].
54 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [82].
55 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [83]–[86].
56 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [87].

13.44 The Court of Appeal then considered the Prosecution's alternative position, that is, that Ramesh would have trafficked in the drugs by returning them to Chander. This raised the issue of whether a bailee who received drugs from a bailor would traffic in the same by returning the drugs to the bailor. The court held that such a bailee would not be liable for trafficking, for the following reasons:

> (a) The starting point of the inquiry was the definition of "traffic" in s 2 of the MDA. The court held that the act of returning drugs to a person originally in possession of them did not clearly fall within the definition of "traffic". The terms "traffic" and "deliver" in s 2 of the MDA had to be interpreted purposively, in the light of the legislative policy underlying the MDA.[57]
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> (b) In enacting the MDA and legislating for harsh penalties to be imposed in respect of trafficking offences, Parliament was not simply concerned with addressing the movement of drugs ***per se***, but the movement of drugs along the supply chain towards the end-users.[58]
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> (c) In this light, there was a fundamental difference in character between (i) someone who held drugs with the sole intention of returning them to the person from whom he received them; and (ii) someone who possessed drugs with a view to passing them onwards to a third party. Returning the drugs to the bailor could not form part of the process of disseminating those drugs from the original source of supply towards the ultimate recipient of the drugs. In fact, it ran counter to that very direction. By contrast, in the latter situation, the intended transfer of the drugs to a third party was presumptively part of the process of moving the drugs along a chain in which they would eventually be distributed to their final consumer.[59]
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> (d) For these reasons, the court held that a bailee who received drugs from a bailor would not "traffic in" the drugs by returning them to the bailor. The court made two further observations:
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> > (i) First, to prove the offences of trafficking and possession for the purpose of trafficking, the Prosecution was not required to prove that the accused was moving the drugs closer to their ultimate consumer. In the vast majority of cases, this result could reasonably be assumed. However, this assumption did not hold true in

57 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [103]–[105].
58 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [109].
59 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [110].

the case of a bailee who merely held drugs with a view to returning them to the bailor.[60]

(ii) Second, depending on the facts, a bailee might well be liable under s 12 of the MDA for abetting or doing acts preparatory to, or in furtherance of, a trafficking offence. A bailee might be so liable if he agreed to safeguard drugs to help a primary offender to evade detection, knowing that the latter intended to traffic in the drugs.[61]

13.45 In the premises, the court decided to amend the charge against Ramesh to a charge for possession *simpliciter* under s 8(*a*) of the MDA, and sentenced Ramesh to ten years' imprisonment on the amended charge.[62]

13.46 Finally, the court turned to Chander's appeal against his conviction on the charge involving the D bundles. The court held that an accused who gave drugs to another (the bailee) with a view to taking them back later would be trafficking in the drugs. Such an act fell unambiguously within the ordinary meaning of terms such as "giving" and "delivering" which were found in the definition of "traffic" in s 2 of the MDA.[63] Further, such an interpretation of trafficking did not lead to a manifestly absurd or unreasonable result, because a person who initiated a safeguarding arrangement was arguably more culpable than the recipient who returned the drugs. The latter did not contribute to the movement of the drugs along the supply chain towards the ultimate consumers. By contrast, the former had already moved the drugs on to a third party and thus facilitated the dissemination of drugs.[64]

13.47 For these reasons, the court held that even if Chander had given Ramesh the D bundles with a view to reclaiming possession of them subsequently, this would nevertheless have amounted to trafficking of the drugs. The court therefore dismissed Chander's appeal against his conviction on the charge involving the D bundles.[65]

13.48 As for Chander's appeal against sentence, the court noted that Chander had received the minimum sentence prescribed by law. The

60 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [114].
61 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [115].
62 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [118].
63 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [123].
64 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [124].
65 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [127].

court therefore dismissed his appeal against conviction and sentence in its entirety.[66]

IV. Other statutes

A. Central Provident Fund Act

13.49 *Public Prosecutor v Jurong Country Club*[67] ("*Jurong Country Club*") were an appeal and cross-appeal arising from the prosecution of Jurong Country Club ("JCC") for failing to pay a gym instructor's Central Provident Fund ("CPF") contributions. It was undisputed that the instructor ("Yusoff") had been an employee of Jurong Country Club Pte Ltd ("JCCL"), the former owner of JCC's business, from 1991 to October 1998. According to JCC, on 1 November 1998, Yusoff became an independent contractor. He did not receive CPF contributions from JCC and JCCL from 1 November 1998 onwards.

13.50 The CPF Board subsequently found that Yusoff had been entitled to receive employer's CPF contributions. JCC was then charged with four charges under s 7(1) read with s 58(*b*) of the Central Provident Fund Act[68] ("CPFA") for failing to pay Yusoff's CPF contributions. The trial judge convicted JCC on all of the four charges, but dismissed the Prosecution's application under s 61B(1) of the CPFA for an order that JCC pay arrears in Yusoff's CPF contributions and interest from December 2003 (when JCC took over JCCL's business) to the date of conviction. JCC then filed an appeal against its conviction, while the Prosecution filed a cross-appeal against the trial judge's dismissal of its application under s 61B(1) of the CPFA.

13.51 Three issues arose on appeal. The first and main issue was whether Yusoff had been an employee for the purposes of the CPFA at the material times. The High Court found that Yusoff had not been an employee, for the following reasons:

> (a) Section 2(1) of the CPFA defined the term "employed" to mean "engaged under a contract of service". The key issue was therefore whether Yusoff was engaged under a contract of service.[69]

66 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [128].
67 [2019] 5 SLR 554.
68 Cap 36, 2013 Rev Ed.
69 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [45].

(b) In deciding whether a person was engaged under a contract of service, the court should have regard to the parties' intentions, either expressly stated or evinced through the terms of the engagement. This was particularly where there was no evidence of a lack of good faith and no indication that the parties had tried to conceal the true nature of their relationship to avoid payment of CPF contributions.[70] That said, where the parties had used a label that did not match the reality of their working relationship, the court should not hesitate to depart from the express wording of the contract. The court had to account for the relative bargaining powers of the parties in deciding whether the written agreement represented what was agreed.[71]

(c) In determining whether a genuine employer–employee relationship existed, the court would continue to apply the prevailing multi-factorial approach. The court would look at the totality of the parties' working relationship with reference to a non-exhaustive list of factors.[72] The pertinent inquiry was whether there were clear indicia of an employer–employee relationship such that this was proved beyond reasonable doubt.[73]

(d) The court then applied the law to the facts, as follows:

(i) The relevant contracts referred to Yusoff as an independent contractor, were stated to be "contract[s] for service" and stated that nothing in their terms should be construed as constituting or having the effect of creating an employer-employee relationship. The Prosecution's case did not appear to have been that this was a deliberate or *mala fide* attempt to conceal an employer–employee relationship. The issue was thus whether the "independent contractor" label used by the parties accurately represented their true relationship.[74]

(ii) The factors of control, personal service and mutuality of obligations were neutral factors, which did not point towards a finding that Yusoff was either an employee or an independent contractor.[75] Other factors – whether Yusoff had taken on financial risks and owned assets, the fact that Yusoff's contract was renewed on an annual or biennial basis, and the fact

70 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [54].
71 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [47].
72 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [49].
73 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [93].
74 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [58]–[59].
75 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [70], [72] and [73].

that his remuneration package was weighted towards commission – were also not determinative or strongly suggestive of an employment or independent contractor relationship.[76]

(iii) However, there were pertinent differences between Yusoff's working arrangements and those of JCC's other employees, which clearly indicated that the parties intended him to be an independent contractor.[77] Thus, the reality of the parties' working relationship was not at odds with the express intention for Yusoff to be an independent contractor. There were no clear indicia of an employer–employee relationship such that this was proved beyond reasonable doubt.[78]

13.52 Thus, the High Court found that Yusoff had not been an employee of JCC. The court accordingly allowed JCC's appeal, acquitting it on all four charges.

13.53 The High Court then made some observations on the *mens rea* requirement under s 58(*b*) of the CPFA, and the interpretation of s 61B(1) of the CPFA:

(a) First, the court observed that s 58(*b*) of the CPFA was a strict liability offence. Though there was generally a presumption that *mens rea* was a necessary ingredient of any statutory offence, this presumption was displaced because the CPFA pertained to an issue of social concern. Imposing strict liability would also promote the objects of the CPFA and increase compliance with it.[79]

(b) Second, the court opined that s 61B(1) of the CPFA allowed the court to order the payment of any contributions due at the date of conviction, whether or not these were the subject of charges preferred. This interpretation was in line with the ordinary meaning of s 61B(1), its context and parliamentary intent.[80] Regarding the principles that should guide the court's exercise of discretion, the time bar applicable to a suit under s 65 of the CPFA was not relevant to the determination of whether an order under s 61B(1)of the CPFA ought to be made.[81] A court

76 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [77]–[78], [82] and [83].
77 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [84]–[89].
78 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [93]–[94].
79 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [100]–[101].
80 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [118]–[121] and [125].
81 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [132].

before which an application under s 61B(1) of the CPFA was made should consider whether the offender had raised any real dispute of law or fact, which required either evidence to be led, or a protracted hearing for its determination. A mere assertion that it was unclear how the certified amounts had been derived would be insufficient.[82] In any event, having acquitted JCC of all the charges, the High Court dismissed the Prosecution's appeal in relation to the application under s 61B(1) of the CPFA.

B. Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

(1) Whether one who launders the benefits of another's criminal conduct may properly be charged under s 47(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

13.54 Sections 47(1) and 47(2) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act[83] ("CDSA") criminalise acts of laundering of the benefits of criminal conduct. These provisions state as follows:

> **Acquiring, possessing, using, concealing or transferring benefits from criminal conduct**
>
> **47.**—(1) Any person who —
>
> (*a*) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits from criminal conduct;
>
> (*b*) converts or transfers that property or removes it from the jurisdiction; or
>
> (*c*) acquires, possesses or uses that property,
>
> shall be guilty of an offence.
>
> (2) Any person who, knowing or having reasonable grounds to believe that any property is, or in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct —
>
> (*a*) conceals or disguises that property; or
>
> (*b*) converts or transfers that property or removes it from the jurisdiction,
>
> shall be guilty of an offence.

82 *Public Prosecutor v Jurong Country Club* [2019] 5 SLR 554 at [133].
83 Cap 65A, 2000 Rev Ed.

13.55 Thus, s 47 of the CDSA distinguishes between one who launders the benefits of one's own criminal conduct (a "primary offender"), and one who launders the benefits of another person's criminal conduct (a "secondary offender"). Primary offenders fall within s 47(1), while secondary offenders are covered by s 47(2).

13.56 In *Yap Chen Hsiang Osborn v Public Prosecutor*,[84] the Court of Appeal emphasised the distinction between primary and secondary offenders in rejecting a charging practice adopted by the Prosecution in cross-border money-laundering cases. The facts were those of a classic "money mule" case. The applicant met one "Laura" on an online dating website and later agreed to receive US$400,000 on her behalf. The moneys were transferred into his bank account from a bank account in Bermuda. The applicant then made withdrawals and transfers of these moneys on Laura's instructions. It subsequently transpired that the moneys were the proceeds of a fraud on the owner of the Bermuda bank account.

13.57 The applicant was charged with one charge of dishonestly receiving stolen property under s 411 of the Penal Code ("DRSP"), and five charges of dealing with the stolen property under s 47(1)(*b*) of the CDSA. These charges were in line with a charging practice adopted by the Prosecution in cases where a secondary offender in Singapore had laundered the proceeds of a foreign crime.[85] In such cases, it would often be difficult to establish a charge under s 47(2) of the CDSA because, to make out such a charge, it would often be necessary to obtain a certificate from the relevant foreign country stating that an offence against its laws had been committed ("foreign certificate"). There were serious difficulties in obtaining foreign certificates as it was not an internationally established practice to issue such certificates.[86] To surmount these difficulties, the Prosecution would charge the secondary offender with DRSP. Once the DRSP offence was established, the offender could technically be treated as a primary offender, because he could be regarded as having laundered the benefits of his own criminal conduct, that is, the DRSP offence. The offender was accordingly charged under s 47(1) rather than s 47(2) of the CDSA.

13.58 The applicant was convicted after trial on all six charges, and sentenced to 30 months' imprisonment. The High Court dismissed both his appeal against conviction and sentence and the Prosecution's appeal against sentence. The applicant then filed a criminal reference to

84 [2019] 2 SLR 319.
85 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [30].
86 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [27].

the Court of Appeal. The court granted the applicant leave to refer two questions of law, including the following question:

> Can a secondary offender like the applicant, who does not himself commit the offence from which the proceeds were originally derived but launders the proceeds of another person's crime, be properly charged under s 47(1) instead of s 47(2) of the CDSA? If not, how would the outcome be affected if the applicant were to be convicted under s 47(2) instead?

13.59 The Court of Appeal answered the said question in the negative and acquitted the applicant of the CDSA charges. In the circumstances, the other question of law did not arise. The court's reasons for its decision were as follows.

13.60 The court first observed that the key question – whether a secondary offender could be charged under s 47(1) instead of s 47(2) of the CDSA – was a question of statutory interpretation. Accordingly, the guidelines laid down in *Tan Cheng Bock*[87] applied.[88] At the first step, the court had to ascertain the possible interpretations of the provision, having regard not just to its text but also to its context within the written law as a whole. In this regard, it was trite that Parliament shunned tautology and the court should thus endeavour to give significance to every word in an enactment.[89]

13.61 The court held that the only possible interpretation of s 47(1) of the CDSA was that it covered only primary offenders. Section 47(1) could not be interpreted to cover secondary offenders, such as the applicant, who were convicted of a DRSP offence.[90] Such an interpretation would render s 47(2) redundant, a result that would be diametrically opposed to the principle that the courts should endeavour to give meaning to every word in an enactment.[91] Further, while s 47(2) referred to the accused "having reasonable grounds to believe" that the relevant property represented another person's benefits from criminal conduct, s 47(1) did not refer to any *mens rea* requirement. This indicated that s 47(1) applied only to primary offenders – it was unnecessary for s 47(1) to stipulate a *mens rea* requirement because a primary offender who benefited from his own criminal conduct would necessarily know that he was dealing with such benefits.[92]

87 See para 13.7 above.
88 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [31].
89 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [32].
90 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [39].
91 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [35].
92 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [38].

13.62 Further, the court rejected the Prosecution's submission that its interpretation of s 47(1) of the CDSA would aid the authorities to achieve the CDSA's aims more effectively. It was not disputed that the purposes of the CDSA were to deprive criminals of the ability to enjoy the fruit of their criminal conduct and to protect the good names of Singapore's financial institutions and its status as a financial hub.[93] However, the Prosecution's submission was undermined by the fact that Parliament had amended the CDSA in 2014, to permit the Prosecution to prove foreign predicate offences more easily. If the Prosecution were correct that secondary offenders who laundered proceeds of foreign crimes could be charged under s 47(1), there would not have been a need to amend the law in the first place.[94]

13.63 For the above reasons, the Court of Appeal held that a secondary offender could not be charged under s 47(1) of the CDSA. The court then turned to consider whether the applicant could be convicted under s 47(2) of the CDSA.

13.64 To make out an offence under s 47(2) of the CDSA, the Prosecution could prove "criminal conduct" in two ways:

(a) First, the Prosecution could adduce evidence to show that an act constituting an offence listed in the Second Schedule to the CDSA had been committed. However, the Prosecution did not rely on this option.[95]

(b) Second, the Prosecution could prove that a "foreign serious offence" had taken place. However, this required the Prosecution to tender a foreign certificate, and no such certificate had been tendered.[96]

13.65 The Prosecution submitted that the applicant could nevertheless be convicted under s 47(2) of the CDSA, since s 2(1) of the CDSA defined "criminal conduct" as "doing or being concerned in, whether in Singapore or elsewhere, any act constituting a serious offence or a foreign serious offence". According to the Prosecution, the foreign criminal was "concerned in" the applicant's DRSP offence, which was a "serious offence". The Court of Appeal rejected this submission for three reasons.

(a) First, the Prosecution's interpretation of s 47(2) would render the definition of "foreign serious offence" that applied at the time of the applicant's offences, under which the Prosecution

93 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [40].
94 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [42].
95 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [48].
96 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [49].

was required to obtain a foreign certificate, largely redundant. If the Prosecution's interpretation of s 47(2) were correct, there would almost never be a need to obtain a foreign certificate because an offender could simply be charged with a DRSP offence, which charge would then form the basis of the s 47(2) offence.[97]

(b) Second, the Prosecution's approach was circular. The Prosecution was essentially submitting that the applicant should be convicted of an offence of dealing with property which represented the benefits of the foreign criminal's conduct. However, on the Prosecution's approach, the foreign criminal conduct was defined with reference to the applicant's criminal offence.[98]

(c) Third, an offence under s 47(2) of the CDSA would only be made out if the foreign criminal had benefited from the applicant's criminal conduct. It was difficult to see how the foreign criminal had benefited from the DRSP offence. It was the applicant's laundering of the stolen property, not his mere receipt of the same, which might benefit the foreign criminal.[99]

13.66 For these reasons, the Court of Appeal found that offences under s 47(2) of the CDSA had not been made out against the applicant.

C. Endangered Species (Import and Export) Act

(1) The meaning of "in transit" under the Endangered Species (Import and Export) Act

13.67 The Endangered Species (Import and Export) Act[100] ("ESA") was enacted to give effect to the Convention on International Trade in Endangered Species of Wild Flora and Fauna[101] ("CITES"), a multilateral treaty which aims to protect endangered species by regulating their movement and trade. Singapore is a party to the CITES.[102]

97 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [52].
98 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [53].
99 *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [54].
100 Cap 92A, 2008 Rev Ed.
101 993 UNTS 243 (3 March 1973; entry into force 1 July 1975).
102 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [5].

13.68 In *Kong Hoo (Pte) Ltd v Public Prosecutor*[103] ("*Kong Hoo*"), a five-judge coram of the Court of Appeal had occasion to consider s 2(2) of the ESA. Section 2(2) provides as follows:

> **Interpretation**
>
> **2.**—
>
> …
>
> (2) For the purposes of this Act, a scheduled species shall be considered to be in transit if, and only if, it is brought into Singapore solely for the purpose of taking it out of Singapore and —
>
> (*a*) it remains at all times in or on the conveyance in or on which it is brought into Singapore;
>
> (*b*) it is removed from the conveyance in or on which it was brought into Singapore and either returned to the same conveyance or transferred directly to another conveyance before being despatched to a place outside Singapore, and is kept under the control of the Director-General or an authorised officer while being so removed, returned or transferred; or
>
> (*c*) it is removed from the conveyance in or on which it was brought into Singapore and kept under the control of the Director-General or an authorised officer for a period not exceeding 14 days, or such longer period as the Director-General may approve, pending despatch to a place outside Singapore.

13.69 Section 2(2) sets out two conditions for a scheduled species to be considered "in transit" for the purposes of the ESA:[104]

> (a) It must have been brought into Singapore for the sole purpose of taking it out of Singapore ("the sole purpose condition").
>
> (b) It remained in the conveyance at all times while in transit but if it was taken off the conveyance, it had to be under the control of an authorised officer ("the control condition").

13.70 These two conditions were the focus of the criminal reference in *Kong Hoo*. The applicants were a company and its director. The company, through its director, entered into a contract to purchase a consignment of Madagascan rosewood, a scheduled species under the ESA. The rosewood was carried by a ship into Singapore waters, and upon the ship's arrival at Jurong Port, part of the shipment was unloaded. The entire shipment was then seized by the authorities.

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103 [2019] 1 SLR 1131.
104 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [3].

13.71 The applicants were each charged with importing a scheduled species without a permit, an offence under s 4(1) of the ESA. The applicants claimed trial and were tried together. The procedural history of the case was unusual and merits mention. At the close of the Prosecution's case, the Defence submitted that there was no case to answer. The trial judge agreed and acquitted the applicants. The Prosecution appealed against the acquittal and the High Court allowed the appeal. Accordingly, when the case resumed in the State Courts, the trial judge called on the applicants to give their defence. However, they elected to remain silent, and offered no evidence. The trial judge then acquitted the applicants once more. This led the Prosecution to file a second appeal against the acquittal, which the High Court allowed, convicting both applicants on the charges against them. The applicants then brought a criminal reference to the Court of Appeal, for the determination of the following questions:[105]

> (a) Question 1: Whether, in determining if a scheduled species is considered in 'transit' within the meaning of s 2(2) of the ESA, it is necessary to prove that, at the time of entry of the scheduled species into Singapore, the scheduled species will leave Singapore at a defined date?
>
> (b) Question 2: Whether, in determining if a scheduled species – which was removed from the conveyance in or on which it was brought into Singapore – was kept under the control of an 'authorised officer' as defined under s 2(2) of the ESA, it must be shown that the officer knew of the existence of the scheduled species and exercised conscious oversight over the scheduled species? In any event, who bears the applicable legal burden of proof?

13.72 The High Court had answered both questions in the affirmative. The Court of Appeal disagreed, answering both questions in the negative, for the following reasons.

13.73 Question 1 related to the sole purpose condition. In gist, the issue was whether the sole purpose condition would only be met if a scheduled species, upon its entry into Singapore, would be leaving Singapore at a definite date. Before the Court of Appeal, both parties accepted that the answer was "no". The court agreed with this conclusion, reasoning as follows:

> (a) The sole purpose condition required that (i) the sole purpose of bringing the scheduled species into Singapore was only to take them out of Singapore; and (ii) this purpose was present from the time the scheduled species was brought into Singapore to the time it was brought out.[106]

105 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [4].
106 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [75]–[78] and [109].

(b) The sole purpose required under s 2(2) of the ESA did not relate to time. Thus, the sole purpose condition did not require proof that at the time of entry of the scheduled species into Singapore, it would leave Singapore at a definite date. Nevertheless, the existence or lack of a definite date of departure was relevant evidence of the trader's purpose or intention.[107]

13.74 Having answered Question 1 in the negative, the Court of Appeal made the following further observations on the sole purpose condition:[108]

(a) Whether the sole purpose required by s 2(2) existed in any particular case was a question of fact for the trial judge.

(b) The trader's acts relating to the scheduled species would usually give the best indication of his purpose and intention for the scheduled species. The sole purpose might be proved by any relevant evidence or documentation, such as import/export permits, container and vessel bookings or the engagement of transhipment services.

(c) The evidence had to point towards two factors: (i) some final destination outside Singapore for the scheduled species; and (ii) existing plans to ship the scheduled species to its final destination within a reasonable time.

13.75 Question 2 related to the control condition. The core issue was whether control, for the purpose of s 2(2) of the ESA, required knowledge and conscious oversight of the scheduled species. The Prosecution submitted that such knowledge and conscious oversight was necessary; the applicants denied this.[109]

13.76 The Court of Appeal agreed with the applicants, holding that in determining if a scheduled species – which was removed from the conveyance in or on which it was brought into Singapore – was kept under the control of an "authorised officer", it was not necessary to show that the authorised officer knew about the arrival and the location of the scheduled species and was in a position to exercise conscious oversight over it.[110] The court's reasons for this conclusion were as follows:

(a) The court first made a few broad points about the control condition.

107 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [7(a)], [80] and [81].
108 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [110].
109 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [82].
110 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [7(b)].

(i) First, it was reasonable to assume that the condition, which appeared only in ss 2(2)(*b*) and 2(2)(*c*) of the ESA, where the scheduled species was removed from the conveyance, but not s 2(2)(*a*), was targeted at some problem or mischief that arose when the scheduled species was removed from the conveyance.[111]

(ii) Second, the meaning of "control" was flexible and had to be derived from the context in which it was used. In the present case, the requirement of control was used in a regulatory context in the sense of an authorised officer supervising endangered species.[112]

(iii) Third, the essence of control was the power to determine whether, when and how to move or otherwise deal with the scheduled species. However, the meaning of "control" had several permutations, which had to be looked at in the light of the statutory purpose.[113]

(b) The court then held that the general purpose of the ESA was to give effect to the CITES by regulating the trade and movement of endangered species.[114] The control condition advanced this purpose in two ways. First, it complemented and furthered the sole purpose condition in that having the scheduled species under the control of authorised officers ensured that the shipment was genuinely intended to be shipped to another country, and not imported into Singapore surreptitiously.[115] Second, it ensured that endangered species were properly transported and managed, even while in transit.[116]

(c) Having identified the statutory purpose and explained how the control condition advanced that purpose, the court considered the Prosecution's and the applicants' proposed interpretations of the control condition in turn. The court opined that both of the competing interpretations would promote the two functions of the control condition and thus, the ESA's general purpose:[117]

(i) The Prosecution's interpretation, which required the authorised officer to know that a scheduled species

111 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [87].
112 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [88]–[89].
113 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [90].
114 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [99].
115 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [104].
116 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [106].
117 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [140].

was presently within his zone of control, would put the officer in the best position to ensure that (A) the scheduled species was truly only in Singapore because it was in transit; and (B) treated in a manner comporting with the ESA's objectives.[118] The applicants' arguments that such an interpretation would be unfair to traders were somewhat overstated, because the requirements imposed on the trader in this context were not onerous.[119]

(ii) That said, the applicants' case – that the control condition simply required physical control of the goods by Customs officers at the free trade zone – also had its merits. Physical control entailed that the authorised officer was empowered (A) to prevent the shipment from leaving his zone of control, which would ensure that the shipment was genuinely in Singapore for the purpose of transit; and (B) to ensure that the scheduled species was properly transported and managed even in transit.[120] Further, the fact that there was no evidence of a regulatory scheme that would allow traders to declare that they were bringing in a scheduled species supported the applicants' position.[121]

(d) In the premises, given that both proposed interpretations of the control condition would promote the two functions of that condition and the general purpose of the ESA, the principle against doubtful penalisation applied. Since the applicants were liable to suffer criminal punishment if the Prosecution's interpretation were adopted, their proposed interpretation was adopted.[122]

13.77 Having accepted the applicants' interpretation of the control condition, the Court of Appeal briefly addressed the issue of who bore the legal burden of proof in respect of that condition. As it was undisputed that the Prosecution bore the burden of proof, the court said no more on the issue.[123]

13.78 The Court of Appeal then applied the law to the facts, as follows:

118 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [119].
119 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [124] and [127].
120 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [131]–[132].
121 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [136] and [139].
122 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [145].
123 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [148].

(a) The court first held that the control condition was met. The requisite physical control was present: the Jurong Port free trade zone was a secured area for the temporary storage of goods; a shipment could not leave the zone without customs having the authority and power to prevent it from doing so.[124]

(b) The court then held that the sole purpose condition was also satisfied. It was undisputed that, for the purpose of this condition, the Prosecution bore the burden of proving *prima facie* that the goods were brought into Singapore and that there was no evidence of any transhipment or transit.[125] The court held that the Prosecution had failed to establish such a *prima facie* case. The evidence of one of the Prosecution's own witnesses was that well before the rosewood arrived in Singapore, the applicants had already communicated to him their intention for the rosewood to be shipped out to Hong Kong. This evidence was supported by documentary evidence. Hence, the Prosecution had failed to establish even a *prima facie* case that the rosewood was imported.[126]

13.79 For these reasons, the Court of Appeal concluded that the rosewood had been "in transit" in Singapore, and thus, the charges of importation without a valid permit were not made out. The court accordingly quashed the applicants' convictions.

D. Infectious Diseases Act

13.80 In *GCP v Public Prosecutor*,[127] the High Court clarified the elements of an offence under s 23(1) of the Infectious Diseases Act[128] ("IDA"), punishable under s 23(3) of the IDA. This section provided:

> **Sexual activity by person with HIV Infection**
>
> **23.**—(1) A person who knows that he has AIDS or HIV Infection shall not engage in any sexual activity with another person unless, before the sexual activity takes place —
>
> (*a*) he has informed that other person of the risk of contracting AIDS or HIV Infection from him; and
>
> (*b*) that other person has voluntarily agreed to accept that risk.

124 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [153]–[154].
125 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [148].
126 *Kong Hoo (Pte) Ltd v Public Prosecutor* [2019] 1 SLR 1131 at [164], [167] and [169].
127 [2019] 5 SLR 626.
128 Cap 137, 2003 Rev Ed.

13.81 The appellant had tested positive for human immunodeficiency virus ("HIV") infection. He was also informed by a public health officer from the National Public Health Unit that he had to inform his partners of his HIV status and obtain their consent if he wanted to engage in any sexual activity. Thereafter, the appellant engaged in penile-oral and penile-anal intercourse with another man ("the victim") on five to six occasions, sometimes without using a condom. The victim was the receptive party in their sexual encounters.

13.82 According to the victim, the appellant never told the victim that he was HIV-positive; he only told the victim that he was waiting for results from "some HIV test" towards the middle of the period where they had sexual relations. The appellant claimed that he had told the victim that he was HIV-positive and on medication.

13.83 The District Judge convicted the appellant of an offence under s 23(1) of the IDA and sentenced him to 24 months' imprisonment. The High Court affirmed both his conviction and sentence.

13.84 A key question on appeal was what information had to be conveyed by a person with HIV infection to other sexual partners in order to avoid liability under s 23(1) of the IDA. The High Court held that mere disclosure of one's HIV status would be insufficient; the HIV-positive person must also unequivocally inform his or her sexual partner of the *risk* of contracting HIV. This was supported by the text of the provision and was consistent with the parliamentary debates.[129] Further, even though disclosing one's HIV status might ordinarily be sufficient to give another person notice of the fact that HIV might be transmitted through sexual activity, this might not be true in all situations, for example, where the victim was ignorant, poorly informed or misinformed.[130]

13.85 On the appellant's own case, he had only informed the victim of his HIV-positive status, and not the risk of transmission through sexual activity with him, and was therefore liable under s 23(1) of the IDA.[131] In any event, the District Judge had rightly accepted the victim's evidence that he did not know the accused was HIV-positive.[132]

13.86 The appellant also argued that he had believed, in good faith, that the victim had agreed to the risk of contracting HIV prior to their sexual acts. The High Court rejected this defence. Given that the appellant had

129 *GCP v Public Prosecutor* [2019] 5 SLR 626 at [33], [35], [37] and [43].
130 *GCP v Public Prosecutor* [2019] 5 SLR 626 at [38].
131 *GCP v Public Prosecutor* [2019] 5 SLR 626 at [41].
132 *GCP v Public Prosecutor* [2019] 5 SLR 626 at [43]–[51].

not informed the victim of the risk of HIV transmission at all, he could not claim to have believed the victim had consented to this risk. The appellant fell far short of establishing that he arrived at this belief with due care and attention, as required under s 52 of the Penal Code.[133]

E. Public Order Act

13.87 In *Jolovan Wham*,[134] the appellant appealed against his conviction and sentence in respect of a charge under s 16(1)(*a*) of the Public Order Act[135] ("POA") for organising a public assembly on 26 November 2016 to publicise the cause of "civil disobedience and democracy in social change" without a permit. He was sentenced to a $2,000 fine (in default, ten days' imprisonment).

13.88 Section 16(1)(*a*) of the POA states:

> **Other offences in relation to assemblies or processions**
>
> **16.**—(1) Each person who organises a public assembly or public procession —
>
> (*a*) in respect of which no permit has been granted under section 7 or no such permit is in force, where such permit is required by this Act;
>
> …
>
> shall be guilty of an offence and shall, subject to subsection (3), be liable on conviction to a fine not exceeding $5,000.

13.89 First, the appellant contended that s 16(1)(*a*) of the POA was unconstitutional. The appellant interpreted s 16(1)(*a*) of the POA to mean that it was an offence for any person to organise a public assembly without a permit issued by the Commissioner of Police ("the Commissioner"), *even if* the Commissioner's refusal of a permit was inconsistent with s 7 of the POA and therefore invalid at law. The appellant submitted that this position contravened Art 14 of the Constitution of the Republic of Singapore,[136] which states:

> **Freedom of speech, assembly and association**
>
> **14.**—(1) Subject to clauses (2) and (3) —
>
> (*a*) every citizen of Singapore has the right to freedom of speech and expression;

133 *GCP v Public Prosecutor* [2019] 5 SLR 626 at [59] and [60].
134 See para 13.13 above.
135 Cap 257A, 2012 Rev Ed.
136 1999 Reprint.

> (*b*) all citizens of Singapore have the right to assemble peaceably and without arms; and
>
> (*c*) all citizens of Singapore have the right to form associations.
>
> (2) Parliament may by law impose —
>
> (*a*) on the rights conferred by clause (1)(*a*), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;
>
> (*b*) on the right conferred by clause (1)(*b*), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order; and
>
> (*c*) on the right conferred by clause (1)(*c*), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, public order or morality.
>
> (3) Restrictions on the right to form associations conferred by clause (1)(*c*) may also be imposed by any law relating to labour or education.

13.90 The High Court found that s 16(1)(*a*) of the POA was not unconstitutional for the following reasons:

> (a) The appellant's submission rested on the assumption that a person who disagreed with the Commissioner's refusal of a permit was entitled to disregard and defy it. This was unjustified. Instead, a person who disagreed with the Commissioner's decision should challenge it in court, and obey it until and unless it was quashed by the court.[137]
>
> (b) The appellant submitted that there was no practical remedy for a person who was repeatedly and unlawfully denied a permit, because the courts could only quash the Commissioner's refusal of a permit but could not direct him to issue one. However, this submission rested on the suggestion that the Commissioner and/or minister would act in bad faith and disregard the court's decision. This was speculative and unsubstantiated. This submission led to the absurd result that any law requiring a permit or licence for an activity could be struck down simply by arguing that the power to grant the permit or licence *might* be exercised in bad faith. Further, it was an established principle that acts of high officials of state should be accorded a presumption of legality or regularity. It should therefore be presumed that

137 *Wham Kwok Han Jolovan v Public Prosecutor* [2019] SGHC 251 at [25].

the Commissioner or minister would act in accordance with the law.[138]

13.91 Secondly, the appellant argued that the event he had organised was not a "public assembly". The word "assembly" was defined in s 2(1) of the POA to mean:

> a gathering or meeting (whether or not comprising any lecture, talk, address, debate or discussion) of persons the purpose (or one of the purposes) of which is ––
>
> (*a*) to demonstrate support for or opposition to the views or actions of any person, group of persons or any government;
>
> (*b*) to publicise a cause or campaign; or
>
> (*c*) to mark or commemorate any event,
>
> and includes a demonstration by a person alone for any such purpose referred to in paragraph.

13.92 The appellant argued that his event did not fall within this definition for three reasons, and therefore did not require a permit:

(a) The appellant claimed that it did not "publicise a cause". The High Court rejected this argument because the appellant was advocating the use of civil disobedience to bring about social change. The bringing about of social change, and the use of civil disobedience in order to achieve that end, both qualified as "causes".[139]

(b) The appellant submitted that the term "assembly" referred to an event that sought to publicise a single and distinct cause, whereas his event indicated two separate topics ("civil disobedience" and "social movements"). The High Court disagreed and held that the term "assembly" included events publicising multiple causes.[140]

(c) The appellant submitted that the discussion during the event did not publicise a cause. The High Court found otherwise: the description of the event on Facebook advocated the use of civil disobedience to bring about social change, and was not just a neutral academic discussion about issues relating to civil disobedience. Further, one of the invited speakers was a known activist who advocated the use of civil disobedience, and the appellant had undoubtedly intended or expected the speaker

138 *Wham Kwok Han Jolovan v Public Prosecutor* [2019] SGHC 251 at [27]–[29].
139 *Wham Kwok Han Jolovan v Public Prosecutor* [2019] SGHC 251 at [37] and [38].
140 *Wham Kwok Han Jolovan v Public Prosecutor* [2019] SGHC 251 at [39].

to advocate the use of civil disobedience to bring about social change. This was further supported by statements made by that speaker and by the appellant during the event itself.[141]

F. Public Utilities Act

(1) Whether a main contractor may be liable for a subcontractor's offence under section 56A of the Public Utilities Act

13.93 Section 56A of the Public Utilities Act[142] ("PUA") imposes secondary criminal liability on persons for offences under the PUA committed by others, subject to a statutory defence set out therein. Section 56A states as follows:

> **Liability for offence committed by agent or employee**
>
> **56A.** Where an offence under this Act is committed by any person acting as an agent or employee of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable for that offence in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part.

13.94 It is plain that the first part of s 56A comprises three limbs, which impose secondary liability in relation to acts committed by three categories of individuals:[143]

(a) a person acting as an agent of the accused ("first limb");

(b) a person acting as an employee of the accused ("second limb"); and

(c) a person otherwise subject to the supervision or instruction of the accused for the purposes of any employment ("third limb").

13.95 In *Public Prosecutor v Soil Investigation Pte Ltd*,[144] the Court of Appeal considered the scope of the third limb of s 56A. The respondent was a main contractor who was awarded a contract to carry out soil investigation works. The respondent then subcontracted part of the works

141 *Wham Kwok Han Jolovan v Public Prosecutor* [2019] SGHC 251 at [40]–[45].
142 Cap 261, 2002 Rev Ed.
143 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [8] and [34].
144 [2019] 2 SLR 472.

to a subcontractor ("GIS"). In the course of GIS's works, a GIS employee damaged a water main. It was undisputed that the GIS employee had thereby committed an offence under s 47A(1)(*b*) of the PUA.

13.96 The respondent was charged for the damage to the main under s 47A(1)(*b*) read with s 56A of the PUA. At first instance, it was convicted of the offence and sentenced to a fine of $50,000. The respondent then appealed against its conviction.

13.97 The central issue in the High Court was whether the respondent fell within the third limb of s 56A of the PUA. The High Court held that the third limb only applied to personnel of the principals and employers who were interposed between (a) the primary offender; and (b) the principals, employers, or the directing mind and will of the principals or employers. This category included personnel of the principal or employer acting in a supervisory capacity over the primary offender. The third limb did not render a main contractor liable for an offence by a subcontractor, because the latter was not subject to the former's supervision or instruction "for the purposes of any employment".[145] The High Court thus found that the respondent did not fall within the third limb of s 56A of the PUA, and acquitted it accordingly. In the circumstances, the High Court found it unnecessary to decide whether the respondent could avail itself of the statutory defence in s 56A.[146]

13.98 The Prosecution then filed a criminal reference to the Court of Appeal, for the court to determine the following question:[147]

> Does the third limb of s 56A of the [PUA] limit liability for an offence under the PUA committed by a primary offender to only 'personnel' or the 'directing mind and will' of the primary offender's principal or employer, who acts in a 'supervisory capacity over' that primary offender?

13.99 After considering the ordinary meaning of s 56A of the PUA, the legislative purposes of s 56A and the PUA and extraneous materials, the court held that the third limb of s 56A extended secondary liability to any person who supervised or instructed a primary offender for the purposes of any engagement, whether or not there was a contract of service.[148] It reasoned as follows:

145 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [9], referring to *Soil Investigation Pte Ltd v Public Prosecutor* [2018] 5 SLR 354 at [42] and [46].
146 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [12], referring to *Soil Investigation Pte Ltd v Public Prosecutor* [2018] 5 SLR 354 at [66]–[67].
147 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [2].
148 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [51].

(a) The court agreed with the Prosecution that the word "employment" had two ordinary dictionary meanings: (i) a legal relationship in the sense of employment pursuant to a contract of service ("the technical meaning"); or (ii) an engagement or use to do something whether or not there is a contract of service ("the broad meaning").[149] The court ruled that the word "employment" in the third limb of s 56A bore the broad meaning, notwithstanding that the word "employee" in the second limb bore the technical meaning. First, the PUA used the root word "employ" in both broad and technical senses.[150] Second, applying the principle that Parliament shuns tautology and the court should therefore endeavour to give significance to every word in a statute, the words "otherwise" and "any employment" in the third limb suggested that it was intended to apply to relationships other than technical, legal relationships.[151]

(b) Further, the ordinary meaning of s 56A aligned with the legislative purposes of the PUA and of s 56A in particular.[152] The legislative purpose of s 56A was to manage and safeguard Singapore's water supply. In line with this overall purpose, the legislative purpose of s 56A was to extend secondary liability to those who were able to control actions which constituted offences under the PUA. Given the legislative purpose of s 56A, the third limb had to apply to those who supervised or instructed a primary offender pursuant to an engagement, whether or not there was a contract of service, because a contract for service was not a prerequisite for control.[153]

(c) Finally, extraneous materials confirmed the ordinary meaning and legislative purpose of s 56A.[154] These showed that Parliament had, over the years, consciously expanded the scope of secondary liability under the PUA to better protect Singapore's water infrastructure.[155] Before s 56A was introduced, the categories of relationships to which secondary liability applied already included main contractor–subcontractor relationships. Interpreting the third limb of s 56A such that liability pursuant to main contractor–subcontractor relationships was excluded would narrow the scope of secondary liability under the PUA,

149 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [31].
150 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [33].
151 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [34].
152 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [36].
153 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [37].
154 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [38].
155 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [45] and [49].

and go against Parliament's expressed intention to "better protect" Singapore's water infrastructure.[156]

13.100 For these reasons, the Court of Appeal answered the question framed by the Prosecution in the negative. The court accordingly set aside the acquittal of the respondent and remitted the case to the High Court to determine if the respondent was able to invoke the statutory defence in s 56A of the PUA.[157]

156 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [50].

157 *Public Prosecutor v Soil Investigation Pte Ltd* [2019] 2 SLR 472 at [52]. In *Soil Investigation Pte Ltd v Public Prosecutor* [2020] SGHC 11, the High Court found that the statutory defence was not made out and dismissed the appeal against conviction accordingly.