

Unsuccessful Prosecution Cases under Section 52(1) of Cap. 132

| | Company A | Company B |
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| Offence | Sale of food not of the substance demanded by the purchaser [contrary to section 52(1) of the Public Health and Municipal Services Ordinance, Cap. 132] | Sale of food not of the substance demanded by the purchaser [contrary to section 52(1) of the Public Health and Municipal Services Ordinance, Cap. 132] |
| Case No. | STS 2045/ 2001 | TMS 13912/1999 |
| Date of Offence | 10.10.2000 | 16.7.1999 |
| Brief Facts | <p>A Health Inspector proceeded to a fresh provision shop in Tai Po and procured a sample of pig's liver for analysis. The sample was marked, sealed and labeled in front of the licensee. The sample was delivered to Government Laboratory for analysis. The report of analysis from Government Laboratory revealed that the sample contained clenbuterol to the extent of 2.4 μg/kg.</p> <p>Clenbuterol may result in food poisoning and a purchaser would not expect the presence of clenbuterol in food.</p> | <p>A Health Inspector purchased a sample of pork from a fresh provision shop in Tuen Mun. The sample was marked, sealed and labeled in front of the person-in-charge of the fresh provision shop. The sample was delivered to Government Laboratory for analysis. The report of analysis revealed that the sample of pork contained clenbuterol to an extent of 9.1 parts per billion by weight.</p> <p>Clenbuterol may result in food poisoning. The presence of clenbuterol was not the demand of purchaser and the extent of 9.1 parts per billion by weight in pork is unacceptable and was a prejudice to the purchaser.</p> |

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| Plea | Not Guilty | Not Guilty |
| Verdict | Acquitted | Acquitted |
| Reasons for Verdict | <ul style="list-style-type: none"> • The court considered the defendant's invoice [issued by Sheung Shui Slaughterhouse (SSSH) for the pigs purchased] true and acceptable • The delivery procedure in SSSH was unsatisfactory on the material date [a new tag and delivery system has been implemented in SSSH since Nov. 2000] • The pigs were delivered to the defendant's fresh provision shop and were checked by defendant's partner and found with stamp marks • The defendant had taken reasonable diligence and believed that the carcass and offal had passed the inspection in SSSH • The defendant thus relied on such inspection • The prosecution had not proved beyond doubt against defendant of the charge • The defendant was therefore acquitted of the charge | <ul style="list-style-type: none"> • The magistrate stated that the defendant intended to rely on section 71(1) of Cap. 132. She accepted the defendant's evidence and invoice. • By proof on balance of probability, she believed that the pork purchased by the Health Inspector was related to the said invoice and the pork was originated from Cheung Sha Wan Abattoir • She also considered that the pig being slaughtered would not render a change of nature of the pork • Hence the defendant could avail section 71(1) as his defence • She acquitted the defendant |

Successful Prosecution Case under Section 52(1) of Cap. 132

| | Company C |
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| Offence | Sale of food not of the substance demanded by purchaser [contrary to section 52(1) of the Public Health and Municipal Services Ordinance (Cap. 132)] |
| Case No. | TWS 22779/1999 |
| Date of Offence | 6.7.1999 |
| Brief Facts | <p>A Health Inspector purchased a sample of pig's liver from a fresh provision shop in Kwai Chung. The sample was marked, sealed and labeled in front of the person-in-charge of the shop. The sample was delivered to Government Laboratory for analysis. The report of analysis revealed that the sample of pig's liver contained clenbuterol to the extent of 39 parts per billion by weight.</p> <p>Clenbuterol is a beta-agonist drug that should not be present in pig's liver. The presence of clenbuterol in food is not of the substance demanded by the purchaser.</p> |
| Plea | Not Guilty |
| Verdict | Convicted |
| Sentence | Fined \$ 5,000 + cost of sample and analysis [i.e. \$ 458] |
| Reasons for Verdict | <ul style="list-style-type: none"> The magistrate was satisfied that the Prosecution had proved beyond reasonable doubt that the defendant sold pig's liver to the prejudice of the Health Inspector who purchased the sample of pig's liver. Clenbuterol should not be present in the viscera or meat of pigs as this drug was not registered in Hong Kong. It was fed to pigs |

illegally and residues of this drug could be found in organs where it tended to concentrate, e.g. lung, liver and kidney. Under such situation, it was a foreign substance. In fact, presence of other substance which was not the normal composition of the food, no matter whether it was due to the above result or by other means such as injection, such substance was a foreign substance

- The evidence given by a senior medical officer and senior veterinary officer of FEHD as expert witnesses was clear that clenbuterol was injurious to health. Though there was no indication about the effect of intake of pig's liver containing 39 parts per billion by weight of clenbuterol, its existence in the pig's liver was not expected by the purchaser. Hence the pig's liver containing clenbuterol was sold to the prejudice of the purchaser and it was not necessary to prove whether consumption of such pig's liver was injurious health or not
- The defendant's evidences [i.e. invoices and receipt with supplier of the pigs] were not accepted as they were hearsay evidence. Hence the requirements under section 70 could not fulfilled for the application of section 70 for defence as intended by the defence.