

LP 5019/6
CB2/BC/19/98

17 April 1999

Mrs Sharon Tong,
Clerk to Bills Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.
(Fax No.: 2877 8024)

Dear Mrs Tong,

**Bills Committee on
Interpretation and General Clauses
(Amendment) Bill 1999**

Meeting on 8 May 1999

Thank you for your letter dated 31.3.99.

My colleague Mr Geoffrey Fox has kindly provided you with the paper requested further to item 3 of the Appendix to your letter with his letter to you dated 8.4.99. This letter provides the material requested further to items 1 and 2 of the Appendix.

Item 1. A summary of the relevant case(s) in Hong Kong where the principles in Pepper v Hart have been applied and how they have affected the decision of the court.

[Note: the summary includes cases in which the court referred to legislative history without citing Pepper v Hart. Where express reference was made to Pepper v Hart this is noted in the summary.]

Matheson PFC Ltd v Jansen [1994] 2HKC 250

Penlington JA cited Pepper v Hart and referred to an explanatory memorandum to the Apprenticeship Bill 1975 to support his finding that para. 1(9) of the Schedule to the Labour Tribunal Ordinance was limited to the contracts of employment specified therein and excluded most contracts of employment to be performed outside Hong Kong. Liu J who gave the lead judgment did not refer to Pepper v Hart in support of the same finding.

Hong Kong Racing Pigeon Association Ltd v Attorney General [1995] 2HKC 201.

Nazareth VP found that there was no ambiguity or obscurity in the meaning of “poultry” or “pigeon” in the Waste Disposal Ordinance or in the Ordinance. Nevertheless he referred to Pepper v Hart and the purpose of the Bill as stated by the Secretary for Health and Welfare in moving the second reading.

Agrila Limited and 58 others v Commissioner of Rating and Valuation LDGA Nos 5-32, 41-53, 55-59, 88, 92, 100-109 and 123 of 1998 (Consolidated) Lands Tribunal 29 March 1999

Yung J cited Pepper v Hart as enabling the Tribunal to look at Hansard for assistance where it was satisfied that section 2 of the Rent Regulations was ambiguous and would lead to absurdity if interpreted literally. The Tribunal referred to two speeches by the Secretary for Planning, Environment and Lands, one in a Bills Committee meeting and the other in a member’s motion debate to amend the Rent Regulations. However the Tribunal concluded that the statements were not clear and that it had to interpret section 2 without the aid of such material.

Fustar Chemicals Ltd v Sinochem Liaoning Hong Kong Ltd [1996] 2 HKC 407

Leonard J referred to the legislative history of Article 21 of the UNCITRAL Model Law on International Commercial Arbitration, incorporated in Schedule 5 to the Arbitration Ordinance, to clarify its object.

Attorney General v Shimuzu Corp (No. 2) [1996] 3 HKC 175

Seagroatt J referred to the second reading speech of the Attorney General when moving the Arbitration (Amendment) Bill 1984 in support of his finding that “interest” in the Arbitration Ordinance allowed an arbitrator to award simple interest or compound interest.

Re Chung Tu Quan & Ors [1995] 1 HKC 566

Keith J referred to the second reading speech of the Secretary for Security when moving the Immigration (Amendment) Bill 1991, and the speech of the Chairman of the Ad Hoc Committee which scrutinised the Bill, on the resumed second reading. However he observed that he had taken neither speech into account since he considered that the amendments spoke for themselves.

Item 2. A list of the practice directions in relation to Pepper v Hart.

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Copies of the following Practice Directions are attached -

- High Court of Australia
Practice Direction
No. 1 of 1984
Use of Extrinsic Material in the Interpretation of an Act
- [House of Lords]
Practice Directions (House of Lords: Supporting Documents) 1 February 1993
- [Supreme Court]
Practice Direction (Hansard: Citation)
20 December 1994

Representatives attending the next meeting

Mr Michael Scott DPGC (Legal Policy)	單格全先生 副首席政府律師 (法律政策科)
Mr Geoffrey Fox DPGC (Law Drafting)	霍思先生 副首席政府律師 (法律草擬科)
Mr Sunny Chan SGC (Law Drafting)	陳元新先生 高級政府律師 (法律草擬科)
Mr Thomas Leung SGC (Law Reform Commission)	梁滿強先生 高級政府律師 (法律改革委員會)

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General

c.c. D of J (Attn: Mr Geoffrey Fox
Mr Sunny Chan
Mr Thomas Leung)