

律政司的信頭
Letterhead of DEPARTMENT OF JUSTICE
法律政策科
Legal Policy Division

Fax: 852-2869 0720

Our Ref.: LP 5019/6
Your Ref.: CB2/BC/19/98
Tel. No.:

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 Ouan & 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.

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)

HIGH COURT OF AUSTRALLA

PRACTICE DIRECTION

NO. 1 OF 1984

**USE OF EXTRINSIC MATERIAL
IN THE INTERPRETATION OF AN ACT**

Where, in proceedings before the Court, a party proposes to rely on extrinsic material pursuant to s15AB of the Acts Interpretation Act, that party shall give to any other party and to the Registrar at least forty-eight (48) hours notice of intention specifying the material on which it is intended to rely.

The use of extrinsic material will not be allowed without leave of the Court in any case where the required notice has not been given to the other party.

Subsection (2) of s15AB provides guidance as to what may constitute extrinsic material.

Brentford Family Proceedings Court, on Thursday, 5 November 1992, for directions to be given, which will enable the hearing to proceed, I hope, smoothly.

*Order accordingly.
No order for costs save
legal aid taxation.*

Solicitors: Nathan (K.P.) & Co., Southall; Borough Solicitor, Hounslow, London Borough Council; Powell Spencer & Partners.

M. B. D.

[HOUSE OF LORDS]

*PRACTICE DIRECTION (HOUSE OF LORDS: SUPPORTING DOCUMENTS)

House of Lords—Practice—Lodging of petition—Supporting documents to be accepted only in exceptional circumstances—Practice Directions applicable to Civil Appeals, dir. 3.1—Practice Directions applicable to Criminal Appeals, dir. 5.1

The following addition to the *Practice Directions applicable to Civil Appeals* of the House of Lords has been made. In practice direction 3, at the end of paragraph 3.1 insert: “Supporting documents, including extracts from Hansard, will only be accepted in exceptional circumstances.”

The following addition to the *Practice Directions applicable to Criminal Appeals* of the House of Lords has been made. In practice direction 5, at the end of paragraph 5.1 insert: “Supporting documents, including extracts from Hansard, will only be accepted in exceptional circumstances.”

JAMES VALLANCE WHITE
*Principal Clerk and
Fourth Clerk at the Table*

1 February 1993

the event gave evidence. It is clear that the consent of the mother was induced by the conduct of the judge, which has already been described by Stuart-Smith L.J.

With respect to the judge, I should comment that whilst in other jurisdictions it is open and often desirable for the court to exercise its influence to induce parties to compromise, it can only be in the rarest of cases an appropriate course to take where sensitive and delicate decisions must be taken to achieve the welfare of children. Parliament has laid down the criteria to be considered by the court when dealing with the welfare of children in the Children Act 1989, and these should be followed. Any short cut which has the result of prejudicing this inquiry must have inherent dangers which should be carefully avoided. For these reasons, and for the reasons already given in the judgment of Stuart-Smith L.J., I agree this appeal should be allowed and a retrial ordered.

Appeal allowed with three-quarters costs.

Retrial ordered.

Costs below reserved to retrial.

Solicitors: Kidd Rapinet, Basingstoke; Ratcliffe, Duce & Gammer, Reading.

[Reported by CHRISTOPHER CHAMPNESS ESQ., Barrister]

[SUPREME COURT]

*PRACTICE DIRECTION (HANSARD: CITATION)

Statute—Construction—Hansard—Reference to reports of Parliamentary proceedings as aid to construction—Service on court and other parties—R.S.C., Ord. 65. r. 5

1. *Authority*

This practice direction is issued with the concurrence of the Lord Chancellor by the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor. It applies throughout the Supreme Court, including the Crown Court, and the county courts.

2. *Application*

This practice direction concerns both final and interlocutory hearings in which any party intends to refer to the reports of Parliamentary proceedings as reported in the Official Reports of either House of Parliament (such reports being hereafter referred to as “Hansard”). No other report of Parliamentary proceedings may be cited.

1 W.L.R. Practice Direction (Hansard: Citation) (Sup. Ct.)3. *Documents to be served*

Any party intending to refer to any extract from Hansard in support of any such argument as is permitted by the decisions in *Pepper v. Hart* [1993] A.C. 593 and *Pickstone v. Freemans Plc.* [1989] A.C. 66 or otherwise must, unless the judge otherwise directs, serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon such extract.

4. *Time for service*

Unless the judge otherwise directs, service upon other parties to the proceedings and the court of the extract and summary of argument referred to at paragraph 3 above shall be effected not less than five clear working days before the first day of the hearing. This applies whether or not there is a fixed date. Solicitors must keep themselves informed as to the state of the lists where no fixed date has been given.

5. *Methods of service*

(a) Service on the court shall be effected in accordance with R.S.C., Ord. 65, r. 5 appropriately addressed as the circumstances may demand: (i) in the Court of Appeal (Civil Division)—three copies to the Registrar, Room E325, Royal Courts of Justice, Strand, London WC2A 2LL; (ii) in the Court of Appeal (Criminal Division)—three copies to the Registrar of Criminal Appeals, Room C212, Royal Courts of Justice, Strand, London WC2A 2LL; (iii) in the Crown Office List—two copies to the Head of the Crown Office, Room C312, Royal Courts of Justice, Strand, London WC2A 2LL; (iv) in the Queen's Bench Division in cases to be heard in London—the Clerk of the Lists, Room W16, Royal Courts of Justice, Strand, London WC2A 2LL; in the Queen's Bench Division in cases to be heard out of London—the chief clerk of the relevant district registry; (v) in the Chancery Division in cases to be heard in London—the Clerk of the Lists, Room TM 8.13, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL; in the Chancery Division in cases to be heard out of London—the chief clerk of the relevant district registry; (vi) in the Family Division in cases to be heard in London—the Clerk of the Rules, Room WG4, Royal Courts of Justice, Strand, London WC2A 2LL; in cases to be heard out of London—the chief clerk of the relevant district registry; (vii) in the Principal Registry of the Family Division—the Assistant Secretary, Somerset House, London SW1R 1LP; (viii) in the Crown Court—the chief clerk of the relevant Crown Court centre; (ix) in a county court—the chief clerk of the relevant county court.

(b) Service upon other parties shall be effected in accordance with R.S.C., Ord. 65, r. 5, or otherwise as may be agreed between the parties.

6. *Failure to serve*

If any party fails to comply with this practice direction the court may make such order (relating to costs and otherwise) as is in all the circumstances appropriate.

LORD MACKAY OF CLASHFERN L.C.
LORD TAYLOR OF GOSFORTH C.J.
SIR THOMAS BINGHAM M.R.
SIR STEPHEN BROWN P.
SIR RICHARD SCOTT V.-C.

20 December 1994