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The Introduction and Comments for this Chapter are contributed by
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INTRODUCTION

Cases that touch and concern interpretation of statutes that have come before His Royal Highness Sultan Azlan Shah during his years as High Court Judge, Federal Court Judge, Chief Justice (Malaya) and Lord President have not been legion. Nevertheless, the ones that have come before His Royal Highness and which are here collected suffice to show his firm grasp of the principles of statutory interpretation.

A survey of these cases serves to highlight certain traits of His Royal Highness — traits admirable in a judge, especially so when they appear in the context of statutory interpretation. These cases albeit small in number amply evince His Royal Highness's application of common sense in the construction of statutes. This is clearly evident, for example, in *Public Prosecutor* v *Masran bin Abu & Ors,*[1] the triad of cases on the construction of section 38(1) of the Election Offences Act 1954 and *Reddy* v *Employees Provident Fund Board.*[2] More important, these cases reflect, as do many in various other areas of the law adjudicated upon by His Royal Highness, his progressive views. His Royal Highness, in carrying out the task of discovering the intention of Parliament, was not a judge who believed himself to be fettered by the supposed rule that he must start with the words used in the statue — and end with those words. In interpreting statutes, His Royal Highness not merely looked to the words used but considered the social conditions giving rise to a particular statute and the mischief which that statute was passed to remedy: see *Non-Metallic Mineral Products Manufacturing Employees Union & Ors* v *South East Asia Firebricks Sdn Bhd.*[3] When the strict, literal interpretation of a statute would lead to a result which would be manifestly or absurd palpably unjust, His Royal Highness has used his good sense to avoid such result: see *Leow Mei Lee* v *Attorney-General & Ors.*[4] His Royal Highness, when occasion demanded, had been prepared to adopt such a construction as would provide the general legislative purpose underlying a statutory provision, an attitude which Lord Diplock described as the "purposive approach". Such traits and attitudes might perhaps be said to be attributable to His Royal Highness's philosophy described in these, his very own, words:

> ... the law must aspire at certainty, at justice, at progressiveness. That is so only if the courts from time to time boldly lay down new principles to meet new social problems.[5]

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[1][1971] 4 MC 192.

[2][1967] 2 MLJ 82.

[3][1976] 2 MLJ 67.

[4][1967] 2 MLJ 62.

[5]*Public Prosecutor* v *Masran bin Abu & Ors* [1971] 4 MC 192 at 193.

DECISIONS AND COMMENTS

GENERAL RULES OF INTERPRETATION OF STATUTES

(a) Whether reference may be made to the repealed provision

(i) Thanimalai & The Government of Malaysia
v
Lee Ngo Yew

[1975] 1 MLJ 125 Federal Court, Ipoh

Coram: Suffian LP, Lee Hun Hoe CJ (Borneo) and Raja Azlan Shah FJ

Cases referred to:-
(1) *Alderman Blackwell's case* (1683) 1 Vern 152; 23 ER 381.
(2) *Rex & Regina* v *Barlow* 2 Salkeld 609; 91 ER 516.
(3) *Walker* v *Hemmant* [1943] 1 KB 604, 605.
(4) *Blackpool Corporation* v *Starr Estate Co* [1922] 1 AC 27 at p 34.

RAJA AZLAN SHAH FJ: Before April 1958 a Magistrate's Court may (or may not) have jurisdiction with regard to civil proceedings against the Government by virtue of FMS (Cap 17) read with section 90 of the Courts Ordinance, 1948. The question now is whether a subsequent legislation which by express words confers jurisdiction on Sessions Courts and the High Court with regard to government proceedings deprives the Magistrates' Courts of jurisdiction it had previously exercised. The general rule undoubtedly is that where jurisdiction is conferred on a court by law, the legislature has power to exclude jurisdiction only by express words or necessary implication.

Section 16 of the Government Proceedings Ordinance, 1956 enacts *inter alia:*

> Civil proceedings by or against the Government as are provided by any statutory provision *repealed* by this Ordinance are hereby abolished... [Emphasis mine]

FMS (Cap 17) is now repealed by the Government Proceedings Ordinance, 1956. Therefore the contents of the earlier Code affords no reliable guide to the interpretation of the subsequent legislation. For all practical purposes the earlier code is 'dead'. It may be noted that it is an express repeal by a subsequent law and not a repeal by implication.

It would seem to be clear that the intention of section 17 of the Ordinance is to exclude the magistrate's jurisdiction.

Section 41(1) of the Ordinance gives power to the High Commissioner in Council (now The Yang di Pertuan Agung) to make any order:

> as appears to him to be expedient with respect to civil proceedings by or against the Government in any court not being the High Court or a Sessions Court.

It may be observed that no similar provision was made in the old FMS (Cap 17). Now the object of the legislature and its intent, meaning and

spirit can only be ascertained from the terms of the Act itself, meaning thus the Government Proceedings Ordinance, 1956. It is my view that the wording of section 17 read with section 41(1) do not contain any ambiguity. They say what they have to say, simply that the Sessions and the High Courts have jurisdiction with regard to Government proceedings. And where the controversial matter is altogether omitted from the Ordinance, it is clearly not allowable to insert it by implication, for to do so would not be to construe the Ordinance but to alter it.

I would allow the appeal.

Abdullah Ngah (Senior Federal Counsel) for the Appellants.
Joga Singh for the Respondent.

(ii) Non-Metallic Mineral Products Manufacturing Employees Union & Ors

v

South East Asia Firebricks Sdn Bhd

[1976] 2 MLJ 67 Federal Court, Kuala Lumpur

Coram: Gill CJ (Malaya), Ong Hock Sim and Raja Azlan Shah FJJ

See under Labour Law at page 770 above.

(b) Retroactive effect of legislation

Kenderaan Bas Mara

v

Yew Bon Tew & Anor

[1980] 1 MLJ 311 Federal Court, Kuala Lumpur

Coram: Raja Azlan Shah CJ (Malaya), Chang Min Tat and Syed Othman FJJ

See under Practice and Procedure at page 790 above.

(c) Effect of retrospective operation of regulations

Pesuruhjaya Ibu Kota Kuala Lumpur
v
Public Trustee & Ors

[1971] 2 MLJ 30 High Court, Kuala Lumpur

See under Practice and Procedure at page 804 above.

(d) Retrospective effect of amendment to Civil Procedure Code

Public Prosecutor
v
Datuk Haji Harun bin Haji Idris

[1977] 1 MLJ 14 High Court, Kuala Lumpur

RAJA AZLAN SHAH FJ: Datuk Harun made a statement to the police on November 22, 1975. That was before the amendment of section 113 of the Criminal Procedure Code which came into force on January 10, 1976. He was arrested two days later. His counsel objected to the admissibility of that statement contending that the old provisions of section 113 still applied and it therefore follows that by virtue of that section the statement was not admissible as evidence.

The general rule is that statutes, particularly amending statutes, are *prima facie* prospective, and retrospective effect is not to be given to them unless by clear words or necessary implication. This presumption does not always apply in cases of legislation dealing with procedure or evidence. Before the amendment, a statement recorded under section 112 of the Criminal Procedure Code cannot, by virtue of section 113 of the Criminal Procedure Code, be used as evidence against the accused. After the amendment such a statement shall be admissible in evidence at his trial. This only means that the rule governing the manner in which such statement can be used as evidence at his trial has been amended. The change is one in procedure; the amendment to section 113 of the Criminal Procedure Code affected the manner in which such evidence is to be enforced. An amending statute which is purely procedural is to be construed as retrospective in its operation, unless a contrary intention appears. In my opinion, there does not seem to be a contrary intention expressed in section 1 of the Criminal Procedure Code (Amendment and Extension) Act, 1976 that it is to operate prospectively. No person has any vested interest in the course of a procedure if during an investigation that procedure is changed. It follows that section 113 of the

Criminal Procedure Code as amended applied in this case.

Assuming the old provisions of section 113 of the Criminal Procedure Code applied, I still think that the statement recorded under the provisions of the Criminal Procedure Code is not rendered inadmissible under section 15 of the Prevention of Corruption Act, 1961 for the purpose of a trial into an offence under that Act, subject of course, to the stringent condition that it was voluntarily made. The old provisions of section 113 of the Criminal Procedure Code are plainly at variance with the provisions of section 15 of the Prevention of Corruption Act, and, in my opinion, cannot be allowed to prevail over the latter for this reason. It would render section 15 of the Prevention of Corruption Act inoperative if the accused's statement is not admissible as evidence at his trial, and, since the Act was enacted later than the Criminal Procedure Code, the provisions of the later Act must prevail if there is any irreconcilable contradiction between their respective provisions. In my judgment, the words '... any statement by an accused person ... made at any time ... whether in the course of a police investigation or not... shall, notwithstanding anything to the contrary contained in any written law, be admissible at his trial in evidence...' are designedly very wide and fall to be widely construed, and it would be undesirable in the extreme to narrow their meaning. Admissibility of a statement is one thing; its probative value is another.

The key question was whether the statement was made voluntarily. It was stressed in argument by counsel for the defence that the moment section 112 of the Criminal Procedure Code was read out to the accused it constituted a threat or inducement in the sense that his frame of mind was such that he was bound to make a statement truthfully, whether in answer to any questions or not, and that failure to do so would entail criminal prosecution. In that frame of mind, it was argued, he had no choice but to comply with the request. It was also contended that the accused was presumed to know the law, in particular, section 113 of the Criminal Procedure Code.

Dealing with the second contention, I would like to correct the false impression that every person is presumed to know the law. It would be contrary to common sense and reason if it were so. The rule is that ignorance of the law shall not excuse a man or relieve him from the consequences of a crime.

It was not denied that the accused made the statement in the form in which in which it appeared. Its validity as evidence was attacked on the ground that when the provisions of section 112 of the Criminal Procedure Code were read out to him, his frame of mind was such that he was bound to answer all questions put to him, otherwise he would be in trouble. In my judgment that contention was a bit far-fetched, and the circumstances did not point in that direction. When the provisions of section 112 of the Criminal Procedure Code were read out to him, it would not be unfair to infer that he was aware of the proviso that he was not obliged to answer any incriminating question. He is an educated man, and legally qualified and has held judicial and legal appointments. I do not think he was likely to be threatened or influenced. He said he

knew the law and therefore the possibility that corruption charges might be preferred against him could not have escaped his mind. Further, the statement was made at a date convenient to him and in his cosy office in the presence of his legal advisers. All the indications showed that the statement had not been obtained in consequence of something said or done by the BSN officers which amounted to an express or implicit threat or promise to him. Looking at the interview as a whole, I am satisfied that the statement was made voluntarily.

Ruling accordingly.

Tan Sri Datuk Hj Mohamed Salleh Abas (Senior Counsel) for the Public Prosecutor.
RR Chelliah for the Accused.

ROAD TRAFFIC ORDINANCE — MEANING OF 'MAY' IN SECTION 92(4)

Sing Hoe Motor Co Ltd
v
Public Prosecutor

[1968] 2 MLJ 54 High Court, Kuala Lumpur

Cases referred to:-
(1) *Public Prosecutor* v *Ong Keng Seong* [1967] 1 MLJ 40.
(2) *Public Prosecutor* v *Teoh Gaik Beng* [1967] 2 MLJ 110.
(3) *Gan Chye Huat* v *Public Prosecutor* [1962] MLJ 27.
(4) *R* v *Ng Hee Weng & Ors* [1956] MLJ 85.
(5) *Public Prosecutor* v *Yap Yoke Sam* [1955] MLJ 114.
(6) *Gan Kim Luu* v *Public Prosecutor* [1961] MLJ 35 at p 36.

RAJA AZLAN SHAH J: This is an application for an order that motor car bearing registration No C 6721, the subject matter of Kuala Selangor Magistrate's Court Summons Case No 378 of 1967 and forfeited by the learned magistrate under section 92(4) of the Road Traffic Ordinance 1958, be released to the applicants as the true owners of the said vehicle.

One Yap Kim Eng had bought the said motor car on hire-purchase from the applicants. Whilst the said car was still on hire-purchase he was charge for having used it as a public service vehicle under section 92(1) of the said Ordinance. The said car had been properly seized by the police. The case eventually came up for hearing before the learned magistrate, who convicted him. He further made an order for forfeiture of the said car under section 92(4) of the said Ordinance, feeling himself bound by the decision in *Public Prosecutor* v *Ong Keng Seong*.[1] The applicants were not given an opportunity to be heard.

The provisions of section 92(4) of the said Ordinance have been the subject of conflicting judicial decisions and in the circumstances it is not surprising that magistrates find it difficult to state with that certainty the law applicable to forfeiture. It is sufficient if I review two earlier decisions.

In *Public Prosecutor* v *Teoh Gaik Beng*,[2] Ong Hock Sim J, after a careful examination of all the earlier cases except that of *Gan Chye Huat* v *Public Prosecutor*,[3] came to the view that 'no such discretion exists following a conviction'. The learned judge seems to draw an analogy from the interpretation put forward by Good J in *R* v *Ng Hee Weng & Ors*,[4] a case under the Customs Ordinance 1952. With respect, I am of the view that it affords no assistance and indeed it is highly dangerous and misleading to draw an analogy from an interpretation of another statute passed at different times and in pursuance of different lines of thought. A comparative analysis of the provisions of section 92(4) of Road Traffic Ordinance and that of section 123 of Customs Ordinance will elicit the differences. Whilst section 92(4) of Road Traffic Ordinance enacts that:

> ...an Order for the forfeiture of such vehicle *may* be made if it is proved to the satisfaction of the court that an offence against this section has been committed.... [Emphasis mine]

section 123(1) of Customs Ordinance enacts that:

> ...an Order for forfeiture of the goods *shall* be made if it is found to the satisfaction of the court that an offence against the Ordinance has been committed... [Emphasis mine]

A distinction between the words 'may' and 'shall' in both the sections as is rightly pointed out in [1967] 2 MLJ xxiii must be borne in mind in interpreting the two sections. If it is the intention of the legislature to construe 'may' as 'shall' it would have expressed so in unequivocal and comprehensive terms.

The learned judge further took the view that the word 'may' in section 92(4) would cover the type of case envisaged by the proviso to section 92(1) even though an offence against the section has been proved to the satisfaction of the trial court. If my understanding of his reasoning, is correct, that construction would seem to apply to cases where an offence against section 92(1) has been committed but applying the proviso the offender is not convicted. In simple words, an offence under this section is committed, but with regard to sentence he was for example discharged under section 173(ii)(a) of the Criminal Procedure Code: see for example *Public Prosecutor* v *Yap Yoke Sam*.[5]

With that construction I respectfully agree. In such circumstances forfeiture is not mandatory. That, in my opinion, is one possible construction. If it is said that that is the only construction, then I say that it is a narrow approach to the whole problem. In my view, the section must be read as a whole. It is also pertinent to bear in mind the penal nature of the statute, and that being so, the natural construction should clearly prevail for the benefit of the person against whom a breach is alleged.

The learned judge cited a certain passage from the judgment of Ong Hock Thye J (now FJ) in *Gan Kim Luu* v *Public Prosecutor*[6] with approval. That passage which must be considered as a *dictum* was subsequently corrected by that learned judge in *Gan Chye Huat* v *Public Prosecutor*,[3] where he observed that the order that must be made under

section 92(4) of the Ordinance is 'for the forfeiture or for the release of any motor vehicles seized'.

I would dissent from the view that no such discretion exists following a conviction. When a discretion as that envisaged in section 92(4) of the Ordinance is given to the courts it means that it is not impossible to conceive of cases which could not be foreseen by the legislature in which an order for forfeiture is unsuitable. Such circumstances will normally be found in the facts of each particular case, and in order to exercise such discretion properly the known circumstances with regard to the particular motor vehicle should be fully considered. That implies an enquiry as to the true character of the motor vehicle concerned, whether it is the subject of a hire-purchase agreement or otherwise. That this seems to be desirable is implicit in a statute which entails penal consequences, that no violence must be done to its language to bring people within it, but rather care must be taken that no one must be brought within it who is not within its express language. Therefore, to adopt that narrow approach as applied by Ali J in *Public Prosecutor* v *Ong Keng Seong*[1] in not enquiring beyond the bare fact of registration is unrealistic to be acceptable and tends to work injustice on an innocent party.

For the above reasons which I have just given there is ground for saying that the learned magistrate had exercised his discretion otherwise than rightly. I feel the order for forfeiture was wrongly made and I would therefore order a proper enquiry as to the true ownership of the motor vehicle under consideration.

Order accordingly.

C Thambiah for the Applicants.
K Somasundram (Deputy Public Prosecutor) for the Respondent.

PUBLIC ORDER (PRESERVATION) ORDINANCE, 1958 — MEANING OF 'WITHIN DOORS'

Public Prosecutor
v
Masran bin Abu & Ors

(1971) 4 MC 192 High Court, Selangor

Cases referred to:-
(1) *Leong Ah Seng* v *Rex* [1956] MLJ 225
(2) *RV Raju & Ors* v *Public Prosecutor* [1953] MLJ 21.

RAJA AZLAN SHAH J (delivering oral judgment): On October 2, 1969 at about 3.15 am at Parit 17 Binjai Patah, Sabak Bernam, in the District of Sabak Bernam, Selangor, 45 people were arrested for breach of curfew. It is common ground that this was a curfew area. These people had no

curfew permits. They were found sleeping in two types of what may be described as make-shift huts. The largest hut measured 10' x 5' and the smallest 5' x 5'. There were no walls, doors or windows. The roofs were of plastic cloth and some had roofs made of jungle leaves. The pillars were of small jungle trees. On those facts these people were charged with an offence under section 7(1) and punishable under section 27 of the said Public Order (Preservation) Ordinance No 46/1958.

At the close of the prosecution case the learned magistrate acquitted and discharged them without calling for the defence. This is what the magistrate said in her judgment:

> At the close of the case for the prosecution I found that the only evidence against the accused persons was that on the day and time in question the 45 accused persons were found sleeping in their resting huts which had been described as having pillars of jungle sticks with roofs of either plastic sheets or jungle leaves and without any doors, windows or walls. There was no evidence as to what sort of floor these huts had and also there were no evidence as to whether these huts had been previously occupied or were occupied on the particular night. And as there is no definition of the words 'within doors' in the Public Order (Preservation) Ordinance No 46 of 1958 or in any other ordinance I was doubtful as to whether the 45 accused persons had committed an offence by failing to remain 'within doors' when they were found sleeping in these resting huts on the day and time in question. I gave the benefit of doubt to the accused and thus acquitted and discharged all of them without calling for the defence.

In my view that is not a right decision. It is too plain that the learned magistrate refrained from making a decision. In the administration of the law it is too tempting to seek escape from the burden of making a decision. If such attitude prevails, then the law would fail to serve as an instrument of social evolution. It would fail to meet the problems of contemporary society. In my opinion, the law must aspire at certainty, at justice, at progressiveness. That is so only if the courts from time to time boldly lay down new principles to meet new social problems.

Coming back to this case, just because the words "within doors" are not defined in the Ordinance is not a ground for not making a decision. Rules of interpretation exist for courts to follow, as in the present case where certain words have not been defined in the Ordinance. In the absence of any judicial guidance or authority, it is not improper to refer to the dictionary meaning of the word 'within' doors'. The 3rd edition of the *Shorter Oxford English Dictionary* describes 'within doors' as in a house or building, indoors'. 'Indoor' is described as pertaining to the interior of a house' and 'house' is described as a building for human habitation'. When all the facts of this case have been gathered together, it cannot be said that these people were 'within doors' on that particular night. These make-shift huts cannot be described as a 'house'. There were no cooking or washing facilities. There were no windows, doors, walls or even roof. If the learned magistrate had properly directed her mind to the circumstances prevailing in the present case, she would no doubt have called for the defence. In my view she was precipitate in her

judgment.

I would therefore allow the appeal and order her to call for the defence.

Appeal allowed.

Nik Mohd Nik Yahya (Deputy Public Prosecutor) for the Appellant.
RPS Rajasooria (Jr) for the Respondents.

EMERGENCY (ESSENTIAL POWERS) ORDINANCE 1970 — MEANING OF 'OTHER ADVANTAGE'

Nunis
v
Public Prosecutor

[1982] 2 MLJ 114 Federal Court, Penang
Coram: Raja Azlan Shah CJ (Malaya), Abdoolcader and Gunn Chit Tuan JJ

Cases referred to:-
(1) *Nothman* v *Barnet London Borough Council* [1978] 1 WLR 220.
(2) *Public Prosecutor* v *Datuk Tan Cheng Swee & Ors* [1979] 1 MLJ 166, 178.
(3) *Haji Abdul Ghani bin Ishak & Anor* v *Public Prosecutor* [1981] 2 MLJ 230
(4) *A Ragunathan* v *Pendakwa Raya* [1982] 1 MLJ 139.

RAJA AZLAN SHAH CJ (MALAYA) (delivering the judgment of the Court): The only question counsel for the applicant concedes he is asking for, of leave to refer to this court under section 66(1) of the Courts of Judicature Act, 1964, is one of construction of the words 'or other advantage' in section 2(2) of the Emergency (Essential Powers) Ordinance No 22 of 1970, and in particular whether it refers only to some form of property, either moveable or immoveable, corporeal or incorporeal.

The brief facts of the matter are that the applicant, the Penang State Fire Chief, recommended to the Chairman of the Lembaga Pengurus Kerajaan Tempatan, two sets of resuscitators and two spare oxygen cylinders to be purchased from Simon Enterprise, a firm wholly-owned by his brother-in-law, at a price of $3,800 when it was established that it could have been purchased at a much lower price direct from Far East Oxygen Sdn Bhd for $2,600 and, as a result of which, Simon Enterprise made a profit of $1,200. He was charged under section 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970 and was acquitted by the president of the sessions court, Penang. On appeal, Abdul Hamid FJ set aside the order of acquittal and substituted an order of conviction and sentenced the applicant to two years' imprisonment. The case turned on the connotation of the words 'or other advantage' under section 2(2) of the said Ordinance which reads as follows:

> 'Corrupt practice' means any act done by any member or officer referred to in sub-section (1) in his capacity as such member or officer, whereby

> he has used his public position or office for his pecuniary or other advantage; and without prejudice to the foregoing, in relation to a member of a State Legislative Assembly includes any act which is contrary to the provision of sub-section (8) of section 2 of the Eighth Schedule to the Federal Constitution or the equivalent provision in the Constitution of a State;.

The learned judge construed the words 'or other advantage' widely having in mind two decisions of this court, namely: *Public Prosecutor* v *Datuk Tan Cheng Swee & Ors*[2] and *Haji Abdul Ghani bin Ishak & Anor* v *Public Prosecutor*[3]. We reproduce two passages from his judgment which we consider as apt and correct:

> There is to my mind no mystery in the word 'advantage'. The expression is to be construed widely to include a benefit or gain of some kind other than pecuniary. If a public officer abuses his public position to advance a private or personal interest whereby it is accrued to him either as a pecuniary gain or benefit or something which is personally beneficial to him even though someone else may derive direct benefit from it, that advantage is, in my view, the kind of advantage that the legislature has in mind.
>
> ...
>
> It is clear from the evidence that the respondent abused his public position when he assisted or gave aid to his brother-in-law. It was beneficial to him personally that by so doing he could provide benefits to close members of his family. It was undoubtedly a comfort to him to be able to effect financial gain to them or their company. To my mind, an act on the part of the respondent was an act of showing favour to his sister's husband or the brother-in-law to effect financial advantage to him.

We should also observe that the learned judge had earlier remarked in his judgment that the totality of the evidence clearly shows that the applicant was interested in the business of Simon Enterprise.

For leave to be granted, it is necessary that the question posed is a question of law raised in the course of the appeal to the High Court and is of public interest. I have in delivering the judgment of this court in *A Ragunathan* v *Pendakwa Raya*[4] dealt with the test for determining what amounts to a question meeting the requisite factors for the purposes of section 66 of the Courts of Judicature Act, and I made it clear that if it is a mere question of principles, which in the matter before us only involves the construction of certain words in a statutory provision in their application to the facts of the case, the question would not be a question of law of public interest.

In the instant application we are of the view that the construction of the words in question in the statutory provision for which leave is sought under section 66 of the Courts of Judicature Act would be a matter of applying the relevant statutory provision to the factual circumstances of any particular case. The learned judge has in fact dealt with the facts of this particular case and applying the statutory provision thereto came to the conclusion that he did. As I have said, these must of necessity vary from case to case according to the facts and we do not therefore think that the question raised before us is accord-

ingly one of law of public interest.

We therefore dismiss this application.

Application dismissed

A Khalid A Manaff (Deputy Public Prosecutor) for the Appellant.
K Balasundram for the Respondent.

ELECTION OFFENCES ACT 1954 (ACT 5)

(a) Purpose and scope of the Act

(i) Ali Amberan
v
Tunku Abdullah

[1970] 4 MC 113 High Court, Kuala Lumpur

RAJA AZLAN SHAH J: In the main Election Petition No 6/69 ([1970] 2 MLJ 15) I have found that Enche Kamaruddin bin Buyong was guilty of corrupt practice under section 11(1)(c) of the Election Offences Act, 1954 (revised 1969) in that he had caused 2,500 cards to be printed without bearing upon their surface the name and address of the printers and publishers. Enche Kamaruddin is not the successful candidate's electoral agent. Notice to show cause why I should not report his case to the Election Commission under section 37(2) has been issued to him. He has appeared with counsel. He has given evidence in the course of which he has intimated that he does not wish to recall any witness who had given evidence in the Election Petition. He testified that he printed those offending cards not with the intention of contravening the election law. He said due to pressure of work when the election was at its peak, he obtained a sample of the card from the 1964 file. That sample did not bear on its surface the name and address of the printers and publishers. There is no doubt that even in 1964, the election law required such cards to bear on their surface the name and address of the printers and publishers. Enche Kamaruddin had caused those offending cards to be printed relying on the 1964 cards, which by itself contravenes the election law. He did not make any prior consultation with his legal advisers. In that respect his action is questionable. He further said that the intention of publishing those cards was to help his party workers but not to influence the voters at the polls. That in my opinion would only be relevant in mitigation of any punishment. The main fact is that he had caused those offending cards to be printed and, on the principle that a man intends the natural consequences of his act, he had certainly contravened section 11(1)(c) of the Election Offences Act, 1954 (revised 1969).

As I have said in the earlier case and I say it again that the primary purpose of the diverse provisions of the election law is to safeguard the purity

of the election process and the courts will not in the ordinary circumstances minimise its operation. It is the concern of the courts to purge elections of all kinds of corrupt or illegal practices so as to protect the political rights of the citizens and the constituency. The election law must be interpreted in the light of this objective. Ignorance of the law is no excuse. Those who contravene the law must bear the consequences.

Enche Kamaruddin has failed to show cause why I should not report his case to the Election Commission and I intend to do so accordingly.

Order accordingly.

Ajaib Singh (Deputy Public Prosecutor) for the Public Prosecutor.
DP Vijandran for Enche Kamaruddin.

(b) Scope of section 38(1) of the Act

(i) Tengku Korish v Mohamed bin Jusoh & Anor.
(ii) Abdul Raouf v Ibrahim bin Arshad & Anor
(iii) Mokhtar bin Abdullah v Mokhtar bin Haji Daud & Anor.

[1970] 1 MLJ 6 High Court, Kuantan

Cases referred to:
(1) *Wolverhampton New Waterworks Company* v *Hawkesford* 6 CB (NS) 336; 141 ER 486, 495.
(2) *Neville* v *London Express Newspaper Ltd* [1919] AC 368
(3) *Attorney-General of Trinidad & Tobago* v Gordon Grant & Company [1935] AC 532.
(4) *Theberge* v *Laudry* (1876), 2 App Cas 102.
(5) *Goonesinha* v *Hon CI de Kretser* [1945] AC 63.
(6) *Arzu* v *Arthur* [1965] WLR 675.
(7) *Ponnuswami* v *Returning Officer, Nammakkal Constituency & Ors* [1952] SCR 218.
(8) *Devan Nair* v *Yong Kuan Teik* [1967] 1 MLJ 261.
(9) *Harcharan Singh* v *Mohinder Singh* AIR (1968) SC 1500.
(10) *Chong Thain Vun* v *Watson & Anor* [1968] 1 MLJ 65.

RAJA AZLAN SHAH J (delivering oral judgment): This is an application to take the election petitions off the file, on the ground that it was not presented within twenty-one days of the date of publication of the result of the election in the *Gazette* as required by section 38(1) of the Election Offences Act, 1954.

The facts are as follows: The 3 petitioners were candidates for the constituencies of Kuala Pahang, Pahang Tua and Rompin for election to the Pahang State Legislative Assembly. On 5th April 1969 they filed their nomination papers. These were rejected by the returning officer on certain grounds which need not be set out at this stage. The returning officer forthwith declared the first respondents to be elected and returned their names in the prescribed forms, i.e., form 5 in the First Schedule to the Elections (Conduct of Elections) Regulations, 1959 to the supervisor of elections who cause them to be published in the *Gazette* on

8th May 1969. The election petitions were presented on 23rd April 1969, that is to say, before the date of publication of the uncontested election results in the *Gazette.*

The question which I have to determine is whether the petitions must be presented after the date of publication of the results in the *Gazette* or before. In order to determine this question I have to put a construction upon the provisions of section 38(1) of the Election Offences Act, 1954 and regulation 10 of the Elections (Conduct of Elections) Regulations, 1959. Section 38(1) enacts that:

> Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Gazette.*

Then regulation 10 provides:

> If on the day of nomination in any constituency, after determination by the returning officer of any objections which may have been lodged, only one candidate stands nominated for that constituency, the returning officer shall forthwith declare the nominated candidate to be elected, and shall forthwith make a return as set out in Form 5 in the First Schedule to these Regulations to the Supervisor of Elections who shall cause the name of the member so elected to be published in the *Gazette.*

It is well recognised that I must not go outside the province of the election law. The Election Offences Act, 1954 confers certain rights and provides a remedy for enforcing those rights. Where that is the case, the remedy provided by that statute only must be availed of. Wills J stated this rule with great clarity in *Wolverhampton New Waterworks Company* v *Hawkesford*[1] in the following passage:

> There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy,and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, *viz.,* where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ... the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The present cases falls within the latter class.

The rule cited in this passage was approved by the House of Lords in *Neville* v *London Express Newspaper Ltd*[2] and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago* v *Gordon Grant & Company.*[3]

What 'right' does the Election Offences Act, 1954 confer, using the word 'right' in its broad sense? In my judgment, the right conferred by

that Act is a special kind of right unknown to the common law or equity, and the court which administers it possesses a special kind of jurisdiction: see *Theberge* v *Laudry*[4], *Goonesinha* v *Hon Cl de Kretser*[5] or what is said in *Arzu* v *Arthur*[6] as a peculiar jurisdiction. It is not a civil right but a creature of statute or special law and must be subject to the limitations imposed by it: see *Ponnuswami* v *Returning Officer, Nammakkal Constituency & Ors.*[7]

The statutory requirements of election law are mandatory and must be strictly observed: see *Devan Nair* v *Yong Kuan Teik,*[8] *Harcharan Singh* v *Mohinder Singh*[9] and *Chong Thain Vun* v *Watson & Anor.*[10]

It is now necessary to put a construction upon the provisions of section 38(1) of the Election Offences Act, 1954 and regulation 10 of the Elections (Conduct of Elections) Regulations, 1959. Regulation 10 enacts that after determination by the returning officer of any objections which may have been lodged, only one candidate stands nominated, he shall forthwith declare him to be elected and shall forthwith make a return in the prescribed form to the Supervisor of Elections, who in turn shall cause the same to be gazetted. It cannot be said that the return of the successful candidate is made as soon as the returning officer declares him to be elected or signs the prescribed form. It seems to me that the true meaning of the regulation is that the return is made when the returning officer sends the prescribed form to the Supervisor of Elections who on receipt of it acts upon it in the sense required by the regulation. Now, what has the supervisor of elections to do upon a return being made to him? He has to gazette the name. In this sense a return is only complete when it reaches the hands of the supervior of elections, so that he can act upon it as is required by law. Now, section 38(1) uses peremptory language and provides a remedy which must be taken to mean what it says, that no court of law is to recognise a petitioner having a right of law until after the date of publication of the election result in the *Gazette.* The word 'of' in this context is no different from the word 'after'.

For these reasons the petitioners, under the compulsion of the Act, must present their petitions twenty-one days 'after' the date of publication of the election result in the *Gazette.* Petition Nos 1, 2 & 3 of 1969 are dismissed with separate costs to the first respondents on the higher scale. Moneys deposited by way of security may be applied towards payment of taxed costs.

Order accordingly.

Petitions dismissed.

Abd Aziz Abdullah for the 3 Petitioners.
Dato' Eusoffe Abdoolcader for the 1st Respondent.
Tan Sri Hj Abd Kadir Yusof (Attorney-General) for the 2nd Respondent.

ADVOCATES AND SOLICITORS ORDINANCE, 1947 — MEANING OF 'PREVIOUSLY' IN SECTION 5(3)(a)

Leaw Mei Lee
v
Attorney-General & Ors

[1967] 2 MLJ 62 Federal Court, Kuala Lumpur
Coram: Barakbah LP, Ong Hock Thye FJ and Raja Azlan Shah J

RAJA AZLAN SHAH J: The present appeal turns upon the interpretation of section 5(3)(a) of the Advocates and Solicitors Ordinance, 1947. It is important to note that the section itself has been amended three times, and it is in the light of these amendments that I propose to consider the present appeal.

The position in 1950:

If a petitioner is a barrister of England and has previously been a pupil of or read in the chambers of a practising barrister in England or a member of the Faculty of Advocates in Scotland of more than seven years standing or in the office of a practising solicitor of the Supreme Court of Judicature of England and Northern Ireland, etc., for a period of six months, or longer, then he must continuously attend and receive instruction in law in the office of a local practicing practitioner of not less than seven years standing for a period of six months; but if he has been a pupil of or read in chambers or 'in such office' for a period of less than six months, then the period he has to read in chambers in the Federation must be of such period as together with the period during which he has read in chambers or in the office of the practising solicitor in England makes a total of twelve months.

The position in 1955:

There was inserted a proviso, *viz.*,where a petitioner has obtained a certificate issued by the Council of Legal Education of England that he has satisfactorily completed the Council's post-final practical course, that is to be equated with pupillage or reading in chambers in England for a period of six months. Therefore, in 1955 the position is this: if the petitioner is a barrister of England and has obtained the post-final certificate he is only required to read in the chambers of a local practising practitioner for a period of six months.

The position in 1961:

In 1961 the 1955 proviso was substituted by a new proviso which re-enacts the old one but adding that a practitioner who has been issued with a certificate by the University of Malaya that he has satisfactorily completed a post-graduate course of instruction organised by the University is also to be equated with pupillage or reading in chambers in England of a period of six months. The position then will be as follows: if the petitioner is a barrister of England and has obtained the post-graduate certificate he is only required to read six months in the chambers of a local practising practitioner.

In any event, the proviso provides an equation as to the length of the national reading in chambers. It was argued before us for the Bar Council that the national reading of six months can only arise if the post-graduate course precedes local reading in chambers. It is the validity of this argument that calls for consideration. Does the section stipulate such a situation? I admit freely that the section seems to be capable of that construction. No doubt if you read it literally it does seem to provide that where a petitioner has obtained a post-graduate certificate the provisions of this paragraph shall apply 'as if he had been a pupil or read in chambers as aforesaid for a period of six months'. There appeared to have been a statutory fiction gone through, the result of which is that the post-graduate certificate stands on the same footing as if the petitioner had been a pupil or read in chambers for a period of six months. But, on the other hand, is that the only interpretation? For that purpose, I think, we must consider what the object of this provision is. Why is it that there is this statutory fiction introduced? The section obviously is not one which has been prepared with much care or skill, or which shews indeed that the draftsman had fully presented to his mind the various cases with which he had to deal. Now, I take it that the purpose of this section as it stood in 1961 was to accommodate the post-graduate course organised by the University of Malaya in Singapore. There was no such course in Kuala Lumpur. Unless I am told otherwise, the course in Singapore was conducted during office hours. The post-graduate course organised by the University in Kuala Lumpur was established in the latter part of 1965 and such a course, I am told, is conducted in the evening and outside office hours in order to allow practising practitioners to conduct it so that their routine business will not be interrupted.

The Bar Council conceded that if the petitioner had completed the post-graduate course done outside office hours and then followed by a six months' local reading in chambers the petition is not objectionable. But they argued that if the petitioner had done the same post-graduate course outside office hours concurrently with the local reading in chambers for a period of of six months it is said that that violates the object of the section. Their sole argument which commends itself to the trial judge rests on the word 'previously' which appears immediately after paragraph (a) of the sub-section. It appears to them legitimate to say that the literal construction of the provisions of that section affords the stand which they have taken. I cannot subscribe to that view. That is to ignore the purpose and object of the post-graduate course which is essentially a course in advocacy as distinct from substantive law which is acquired in chambers. To my mind, the word 'previously' has been strained beyond permissible limits and due regard has not been made to interpret the section in its proper context. It would be the height of absurdity to hold that while the reading in chambers for a period of six months which is preceded by a post-graduate course done outside office hours is good, the reading in chambers for a period of six months concurrently with the post-graduate course done outside office hours is invalid. When the language of the legislature construed literally

involves such consequences, the court has over and over again acted upon the view that the legislature could not have intended to produce a result which would be palpably unjust, and would revolt the mind of any reasonable man, unless they have manifested that intention by express words.

I would allow the appeal and admit the petitioner.

Appeal allowed.

M Shankar for the Appellant.
RR Chelliah & KA Menon for the Bar Council and Bar Committee.
Ajaib Singh for the Attorney-General.

MEANING OF 'MALAYA' ON FORMATION OF 'MALAYSIA'

(i) Reddy
v
Employees Provident Fund Board

[1967] 2 MLJ 82 High Court, Kuala Lumpur

Cases referred to:-
(1) Direct US Cable Co v *Anglo-American Telegraph Co* (1877) 2 App Cas 394, 412.
(2) *Barnes* v *Jarvis* [1953] 1 WLR 649.

RAJA AZLAN SHAH J: This is an application for a declaration that KCI Reddy is entitled to withdraw the whole of the sum standing to his credit in the Employees Provident Fund.

It is not disputed that at the time of the action the applicant was a magistrate in the Judicial and Legal Service of the Government of the Federation of Malaysia. He had then applied for service in the Judicial and Legal Service of the Government of the Borneo States and therefore he intended to leave the States of Malaya for Borneo and had no intention of returning. That was conceded by the respondent board. In fact, the applicant is at present a judicial officer serving in the Borneo States.

The only issue pertinent to the present application is the construction of the provisions of section 13(1)(d) of the Employees Provident Fund Ordinance which reads:

> 13(1): No sum of money standing to the credit of a member of the fund may be withdrawn from the fund except with the authority of the board and, subject to any regulations and rules made under sections 20 and 21 of this Ordinance, such authority shall not be given unless the board is satisfied that —
> (d) the employee is about to leave Malaya with no intention of returning thereto.

In the light of the concession made by the respondent board, the sole question to be resolved is whether the word 'Malaya' as enacted in sub-

section (1)(d) means what it says or whether it means 'Malaysia'. If 'Malaya' means 'Malaysia', then it is fatal to the present application.

The Employees Provident Fund Ordinance has quite a long statutory history, and I must consider it. The Ordinance came into force on 1st October 1951. It is singularly significant to note that throughout the Ordinance the only place where the word 'Malaya' is used is under section 13(1)(d). In four other places, that is section 2, the interpretation section, section 3 dealing with the constitution of the board, and the schedule to section 2, the phrase 'Government of the Federation' is used, and in section 4, the provision which establishes the provident fund, section 5, in relation to expenses, and section 16(5), which requires an employer to furnish the board with certain particulars in respect of the approved fund, the word 'Federation' is used to denote the identity of the country. None of those phrases or words, that is, 'Government of the Federation', 'Federation' or 'Malaya' have been defined in the Ordinance and therefore it is necessary to resort to the Interpretation and General Clauses Ordinance, 1948. Under section 2 which deals with definitions it is perfectly clear that 'Malaya' was defined to include all the Malay States and Settlements comprising the Federation of Malaya as well as the Colony of Singapore. The important distinction here is that 'Federation', which was defined as The Federation of Malaya established pursuant to the Federation of Malaya Agreement, 1948, was not to include Singapore, whereas 'Singapore' has been included within the definition of 'Malaya' as early as 1948. The Ordinance was amended from time to time, but for purposes of present consideration no significant amendment was made until 1959. In that year, consequent upon the establishment of the State of Singapore, the Ordinance pertaining to Singapore was amended and the definition of 'Malaya' then was defined as 'States of the Federation and Singapore'. The changes made in 1959 have remained until today in the Ordinance. The legislature has thought fit not to alter the meaning of the word.

Insofar as the Employees Provident Fund Ordinance is concerned, various amendments were made but section 13(1)(d) has left the word 'Malaya' untouched. With the emergence of Malaysia, the provisions of Part IV of the Malaysia Act have effect as if embodied in the Constitution: see article 159A. It is therefore necessary to consider the relevant transtitional and temporary provisions. Section 73 of the Act enacts:

> 73(1). Subject to the following provisions of this Part of this Act and to any law passed or made on or after Malaysia Day, all present laws shall, on and after Malaysia Day, have effect according to their tenor, and be construed as if this Act had not been passed:
>
> Provided that references to the Federation (except in relation to a time before Malaysia Day) shall be construed as references to Malaysia, and expressions importing such a reference shall be construed accordingly.
>
> (4) This section shall not validate or give effect to any provision contained in the present law of the Federation which is inconsistent with the Constitution, or any provision of present law which is invalid for reasons other than inconsistency with the Constitution.
>
> (5) In this Part of this Act 'present laws' means the laws of the

> Federation, of each of the Borneo States and of Singapore passed or made before Malaysia Day, but does not include the Constitution of the Federation or any of those States or this Act.

The Employees Provident Fund Ordinance is accordingly a present law. Is the Ordinance and in particular is section 13(1)(d) inconsistent with any provisions of the Constitution? The answer must be found in the Constitution itself. Whereas 'Malaya' is defined in item 48 of the Interpretation and General Clauses Ordinance as 'States of the Federation', that phraseology is nowhere defined under Article 160 of the Constitution nor in the Malaysia Act. However, item 86c of the Interpretation and General Clauses Ordinance defines 'States of the Federation' as the States of Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor, Trengganu, Malacca and Penang, and all dependencies, islands and places which on Merdeka Day were administered as part thereof, and the territorial waters adjacent thereto. It is submitted by Dato' Athi Nahappan that insofar as the Employees Provident Fund Ordinance is concerned the inclusion of 'Singapore' is no longer consistent with the Constitution when she seceded from Malaysia: see section 3 of Constitution and Malaysia (Singapore Amendment) Act, No 53 of 1965. Since the Ordinance is inconsistent with the Constitution, the court is empowered by Article 162(6) to modify the said Ordinance so as to bring it into accord with the provisions of the Constitution. Therefore, with the separation of Singapore, 'Malaya' in the Employees Provident Fund Ordinance means 'States of the Federation'. Up to that point counsel's argument is beyond criticism, but he goes further to say that 'Malaya' now means 'States of Malaya' and accordingly prayed for the court's indulgence to modify the meaning of 'Malaya' so as to bring it into accord with the provisions of the Constitution. He based his reasoning on the proposition that since the original intention of the Employees Provident Fund Ordinance was to confine its application to the States of Malaya and Singapore, with the emergence of Malaysia the States of Malaya are still the original 'States of Malaya' as defined in Article 1(2)(a) of the Constitution. Counsel finds support for that proposition on the basis that the lesser does not include the greater, meaning that the States of Malaya do not include the States of the Federation but the States of the Federation include or consist of the States of Malaya and the Borneo States.

In my opinion, the ingenuity of counsel's argument overlooked one of the canons of construction of statutes which is this: where a statute does not define words, it is proper to determine their meaning and the intention of the legislature in enacting them by a consideration of the whole statute and every part of it. And in order to understand these words it is natural to enquire what is the subject matter and the object in view': *Direct US Cable Co* v *Anglo-American Telegraph Co.*[1] As was stated by Lord Goddard CJ in *Barnes* v *Jarvis,*[2] 'A certain amount of common sense must be applied in considering statutes. The object of the Act must be considered'. What then is the object of the Employees Provident Fund Ordinance? It is to provide financial security to an

employee in his old age. The Ordinance was originally drafted for Malaya and Singapore. The intention is that unless a contributor leaves Malaya and Singapore with no intention of returning as distinct from leaving one State for another State within the constituent part of Malaya and Singapore, he is not entitled to withdraw his money. That is consistent with the Ordinance read as a whole. With the emergence of the Federation of Malaya in 1957 as an independent and sovereign State, the provisions of the Ordinance in conformity with the new constitutional changes were made to apply to the whole of the new emerging State. Thus, item 48 of the Interpretation and General Clauses Ordinance defines 'Malaya' as the States of the Federation and Singapore'. 'States of the Federation' as defined in item 86c of the Interpretation and General Clauses Ordinance means the nine Malay States and the two former Settlements of Penang and Malacca. Such is the intention of the Employees Provident Fund Ordinance in the light of the new constitutional set-up. Although 'Malaya' in the Ordinance is not amended, the Interpretation and General Clauses Ordinance is amended to fit in the new changes. With the emergence of Malaysia, neither 'Malaya' in the Employees provident Fund Ordinance nor 'States of the Federation' in the Interpretation and General Clauses Ordinance were amended to fit in the new changes. However, Part IV of the Malaysia Act is embedded in the Constitution and the proviso of section 73(1) of the Act enacts 'that references to the Federation shall be construed as references to Malaysia, and expressions importing such a reference shall be construed accordingly'. It therefore follows that reference to 'States of Federation' would now bear reference to 'States of Malaysia and Singapore', and with the secession of Singapore it would now mean 'States of Malaysia'. That is my interpretation of 'Malaya' in the Employees Provident Fund Ordinance as defined by the Interpretation and General Clauses Ordinance having regard to the proviso of section 73(1) the Malaysia Act. That, to my mind, is not inconsistent with the provisions of Article 1(2) of the Constitution which declares 'States of the Federation' as the eleven States of Malaya and the two States of Borneo. As a matter of deduction, section 13(1)(d) of the Employees Provident Fund Ordinance, which derives its definition of 'Malaya' from the Interpretation and General Clauses Ordinance, is not inconsistent with any provision of the Constitution. If the result appears grotesque, that is not a reason why the law should not be enforced, but it may be a reason why the law should be altered.

I would therefore dismiss the application with costs.

Application dismissed.

Dato Athi Nahappan for the Applicant.
Robert Ho for the Respondent.