

The court was of the view that the heading in issue did not assist the appellant and did not express its view on the argument (see paras 10 and 11). (For the Court of Final Appeal decision of the above case, see [2008] 2 HKC 283, [2008] HKCU 171.)

In *Hoi Cheng Pan v Headstart Educational Group Ltd* [2007] HKCU 897 ((unreported, DCCJ 4028/2006; DCCJ 4028A/2006, 24 April 2007), the defendant's counsel argued that the heading of s 41 the District Court Ordinance (Cap 336), which stated 'Procedure where proceedings beyond the jurisdiction of the court are commenced in the Court', included a power to strike out a claim within the exclusive jurisdiction of the Small Claims Tribunal even the section did not provide so. The court disagreed with such an argument.

In *Re Au Wai Ying* [2006] 3 HKC 617, [2006] HKCU 1409, the court considered that despite s 18(3), the heading can give hints as to legislative intention of s 20K(2) of the Bankruptcy Ordinance (Cap 6). (See para 11 of the judgment.)

See also *Owen John Inglis v Loh Lai Kuen Eda* [2005] 3 HKC 115, [2005] HKCU 975; *Fok Lai Ying v Governor in Council & Ors* (1996–1997) 7 HKPLR 63.

This section was applied in *Hse Fei Lun v So Suk Yee* ((unreported, HCPI 606/2012, 10 April 2014), a personal injury case. The Court held that Order 80, rule 15 of the Rules of the High Court is not restricted to actions concerning persons under disability.

19. General principles of interpretation

An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.

Enactment history

[19.01]

This section is originated in 1966 (originally 31 of 1966) commencing 31 December 1966.

General note

[19.02]

This section creates a lot of controversies as the section consists of different principles of interpretation. There is an article by Peter Wesley-Smith, 'Literal or Liberal? The Notorious Section 19' (1982) 12 HKLJ 203, which discussed the different principles of interpretation under s 19.

This section incorporated the 'mischief' rule (*Kong Kam-piu v The Queen* [1973] HKLR 120, [1973] HKCU 11). In the UK, the mischief rule is not incorporated into their Interpretation Acts, whereas the Canadian and New Zealand legislations have similar provisions.

When interpreting a word or section, there are many occasions where parties tend to rely on s 19 of the IGCO. However, in *R v Soo Fat Ho* [1992] 2 HKCLR 114, [1992] HKCU 468, the Court of Appeal was of the view that s 19 was frequently ignored and that it must be given full recognition and effect.

Recently, with the wider acceptance of the purposive approach, the court frequently invoked this section in cases concerning statutory interpretation. Yet, this section does not permit departure from the plain and clear meaning of the words: *Kin Kiu Enterprises Ltd v Wairika Ltd* [1983] 2 HKC 458; *PCCW-HKT Telephone Ltd v Telecommunications Authority* [2004] HKCU 783 ((unreported, CACV 274/2003, 8 July 2004) (CA) at paras 40–41; *Ho Lan Fong v Lam Gook t/a Lam Tai Hing Restaurant* [2004] 3 HKLRD 47, [2004] HKCU 513 at paras 21–26; *China Field Ltd & Anor v Appeal Tribunal (Buildings) & Anor* [2009] 5 HKC 231 at 244 F–H, [2009] HKCU 1650; *HKSAR v Cheung Kwun Yin* (張冠賢) [2009] 6 HKC 22, [2009] HKCU

1036. It is also incorrect to say that it results in the complete rejection of the literal rule: *United Insurance Co Ltd v R* [1938] NZLR 885, at p 913.

Social consideration cannot by virtue of s 19 displace legal principles: *Leung Chack v Asia Insurance Co Ltd* [1991] HKDCLR 8, [1991] HKCU 359 (DC) (on appeal, see [1991] 2 HKLR 496, [1991] HKCU 446 (CA))

When the true position under a statute is to be ascertained by interpretation, it is necessary to read all the relevant provisions together and in the context of the whole statute as a purposive unity in its appropriate legal and social setting. Furthermore, it is necessary to identify the interpretative considerations involved and then, if they conflict, to weigh and balance them. See *Medical Council of Hong Kong v Chow Siu Shek* [2000] 2 HKC 428, (2000) 3 HKCFAR 144 at 154B–C.

Canada

[19.03]

The Canadian Interpretation Act has similar provision both under the Federal Act and Yukon Territorial Act.

Canadian Federal Interpretation Act, RSC 1985, cI-21, s 12:

Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Revised Statutes of The Yukon 2002, RSY 2002, c 125, s 10:

Every enactment and every provision thereof shall be deemed remedial and shall be given the fair, large, and liberal interpretation that best insures the attainment of its objects.

New Zealand

[19.04]

Section 5(j) of the New Zealand Acts Interpretation Act 1924:

Every act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purpose is to direct the doing of anything parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large and liberal construction, and interpretation as will best ensure the attainment of the object of the act and of such provision or enactment according to its true intent, meaning, and spirit.

‘Deemed to be remedial’

[19.05]

In *Foo Ying executor to the estate of Law Choy-wan v Commissioner of Estate Duty* [1989] 2 HKLR 376, [1989] HKCU 476, it was stated that where the meaning of the words was not plain, it was permissible to seek assistance from a consideration of the remedial purpose of the legislation and its context.

The section was applied in *Cheng Chung-wai v R* [1980] HKLR 593, [1980] HKCU 48, when the court considered the rules of interpretation. At para 18, the court held that:

pronouncements in the Legislative Council may not be looked at. Nor is the court entitled to have regard to the Objects and Reasons attached to the Bill other than for the purpose of ascertaining the mischief sought to be remedied. Not only is this in accordance with the expressed principles of statutory interpretation but it is

in keeping with the statutory requirement laid down in section 1 Interpretation Ordinance.

The section was applied in *Chan Chun Wai v Commissioner of Estate Duty* HKLR 765, (1987) 3 HKTC 152, [1987] HKCU 202, when the court considered s 31 of the Estate Duty Ordinance (Cap 111). McDougall J held, ‘In interpreting an Ordinance it is necessary to give effect to its true intent meaning and spirit.’

In *Chan Pun Chung & Anor v HKSAR* [2000] 4 HKC 283 (CFA), Chan J held that, ‘An ordinance should receive a fair, large and liberal construction and interpretation as best ensured the attainment of the object of the ordinance according to its true intent, meaning and spirit as required under s 19 of the Interpretation and General Clauses Ordinance ... In these circumstances, it is, in my view, not too far-reaching to adopt a remedial construction in the interpretation of section 159E Crimes Ordinance.’ Faced with two unsatisfactory interpretations, the court preferred the one that did not do full justice to the language to the other that did not give effect to the intention of the legislature.

It is not permissible for fairness to ‘be strained to such an extent as to frustrate the object of the statute’: *Tsang Lin v Tong Ling Shipping & Enterprises Co Ltd* HKC 449 (DC). In this case it was held that compensation for loss of earning capacity resulting from an unlisted injury was limited to the percentage of physical or functional impairment under the Employees’ Compensation Ordinance (Cap 282). See also *HKSAR v Lam Kwong Wai & Anor* [2006] 3 HKLRD 808, (2006) 9 HKCFAR 574, [2006] HKCU 1465.

In *Wong Hon Sun (黃瀚筌) v HKSAR* [2010] 1 HKC 18, (CFA) held that the move from a mandatory forfeiture regime (under the repealed Importation and Exportation Ordinance) to a discretionary regime (under s 27(2) of the Import and Export Ordinance) ‘is obviously remedial’.

‘Fair and liberal’ construction

[19.06]

Even reasonable people may often differ over what is meant by ‘fair, large and liberal’: *Medical Council of Hong Kong v Chow Siu Shek David* [2000] 2 HKC 428at 438, (2000–2001) 9 HKPLR 449 (CFA). The section only requires the interpretation to be fair. It is not concerned with fairness of the result of the interpretation: [1977] HKLR 523at 530.

A fair and liberal interpretation often results in the adoption of a wide meaning of the words. For example, it was held in *Re National Commodities Traders Ltd* 2 HKC 652 that the word ‘audit’ in the Commodities Trading Ordinance (Cap 250) (now repealed) included an investigation or examination of accounts. Similarly in *v Harbour Engineering Co Ltd* [1986] HKLR 613, [1986] HKCU 267, the court took note of the purpose of the Construction Sites (Safety) Regulations (Cap 59I) to the Factories and Industrial Undertakings Ordinance (Cap 59), ie ‘to provide for the safety of workmen who are liable to come into contact with any electric cable while engaged in construction work’. The court adopted a very wide meaning of the term ‘construction site’ and held that a trench 2.4 meters in length by 0.6 meter wide and 0.6 meter depth was a ‘construction site’.

To achieve the plain objects of the Solicitors’ Practice Rules (Cap 159H) to ensure that a solicitor’s duty to act in the best interests of his client, his own reputation and the reputation of the profession and a proper standard of work are not impaired or compromised, the court in *Chan Siu Chung v Law Society of Hong Kong* HKC 373 (CA) held that the phrase ‘in relation to that client’s criminal litigation’ covers situations ‘where solicitors are acting not in the actual course of criminal litigation, but preliminary, preparatory or incidental or even in anticipation of litigation’.

Ma CJ said in *Cathay Pacific Airways Ltd v Kwan Siu Wa Becky* 526, (2012) 15 HKCFAR 615 at para 20(1) that, as a general approach to statutory