

# In the Privy Council

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## ON APPEAL FROM THE COURT OF APPEAL OF HONG KONG

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### BETWEEN

CHEUNG CHEE-KWONG ... .. *Appellant*

— and —

THE QUEEN ... .. *Respondent*

— and —

ATTORNEY GENERAL ... .. *Appellant*

CHEUNG CHEE-KWONG ... .. *Respondent*

### CONSOLIDATED APPEALS

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**APPELLANT'S CASE (FIRST APPEAL) *Record***  
**RESPONDENT'S CASE (SECOND APPEAL)**

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CONSOLIDATED APPEALS

**APPELLANT'S CASE (FIRST APPEAL)** *Record*  
**RESPONDENT'S CASE (SECOND APPEAL)**

1 These are Consolidated Appeals from the judgment of the Court of Appeal of Hong Kong whereby the Court of Appeal dismissed the application for leave to appeal against conviction made by the first Appellant (Cheung Chee-Kwong), and allowed the first Appellant's application for leave to appeal and his appeal against sentence to the extent that the Court of Appeal varied the trial Judge's order in respect of the payment to be made to the Crown by the first Appellant pursuant to Section 12(3) of the Prevention of Bribery Ordinance Cap 201, Laws of Hong Kong. pp 33-44  
pp 41-42

2 The Questions for decision involve the construction and application of the Prevention of Bribery Ordinance, and in particular the following provisions:—

(a) Section 10(1) which provides that:—

“10(1) Any person who, being or having been a Crown servant—

(a) maintains a standard of living above that which is commensurate with his present or past official emoluments;

or

(b) is in control of pecuniary resources or property disproportionate to his present or past official emolument, shall, unless he gives a satisfactory explanation to the Court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.”

(b) Section 12 which provides that:—

“12(1) Any person guilty of an offence under this Part, other than an offence under Section 3, shall be liable—

(a) on conviction on indictment—

(i) for an offence under Section 5, 6 or 10, to a fine of \$100,000 and to imprisonment for 10 years and

(ii) for any other offence under this Part, to a fine of \$100,000 and to imprisonment for 7 years; and

(b) on summary convictions, to a fine of \$50,000 and to imprisonment for 3 years, and shall be ordered to pay to such person or public body and in such manner as the Court directs, the amount of value of any advantage received by him, or such part thereof as the Court may specify.

(2) Any person guilty of an offence under Section 3 shall be liable on conviction to a fine of \$20,000 and to imprisonment for 1 year, and shall be ordered to pay to the Crown in such manner as the Court directs the amount or value of the advantage received by him or such part thereof as the Court may specify.

- (3) In addition to any penalty imposed under sub-section (1), the Court may order a person convicted of an offence under Section 10(1) (b) to pay to the Crown—
- (a) a sum not exceeding the amount of the pecuniary resources; or
  - (b) a sum not exceeding the value of the property, the acquisition of which by him was not explained to the satisfaction of the Court.
- (4) An order under sub-section (3) may be enforced in the same manner as a judgment of the Supreme Court in its civil jurisdiction.”

**3** Section 3 of the Interpretation and General Clauses Ordinance provides inter alia that :—

“‘or’, ‘other’ and ‘otherwise’ shall be construed disjunctively and not as implying similarity, unless the word ‘similar’ or some other word of like meaning is added”.

**4** Section 2(1) of the Interpretation and General Clauses Ordinance provides that :—

“2(1) Save where the contrary intention appears either from this Ordinance or from the context of any other Ordinance or instrument, the provisions of this Ordinance shall apply to this Ordinance and to any other Ordinance in force, whether such Ordinance came or comes into operation before or after the commencement of this Ordinance, and to any instrument made or issued under or by virtue of any such Ordinance.”

**5** This Appellant in his sole ground of appeal to the Privy Council contends that the charge laid against him was bad in law in that it was bad for duplicity.

**6** The charge laid against this Appellant was worded as follows :

#### STATEMENT OF OFFENCE

Being a Crown Servant was in control of pecuniary resources of property disproportionate to his then present or past official emoluments contrary to section 10(1) of the Prevention of Bribery Ordinance Cap. 201.

#### PARTICULARS OF OFFENCE

Being a Crown Servant, namely a Detective Station Sergeant of the Royal Hong Kong Police Force was on the 28th day of July 1971 in control of pecuniary resources or property disproportionate to his then present or past official emoluments.

- 7** This point was not taken at the Court of trial but was a ground of appeal before the Court of Appeal. It is submitted that the point can be validly taken on appeal and that the Court of Appeal correctly considered the same as going to jurisdiction.
- 8** This Appellant contends as he did before the Court of Appeal that the charge was bad for duplicity for the following reasons :
- (a) That the charge alleged two separate criminal offences; alternatively.
  - (b) That the charge alleged two separate criminal acts which were charged disjunctively.
- 9** This Appellant contends that the Court of Appeal correctly held that the word 'or' in section 12(3) of the Ordinance had to be read disjunctively. It is submitted that the same meaning should be given to the word 'or' in section 10(1) (b) of the Ordinance.
- 10** This Appellant further contends that section 12(3) of the Ordinance is part of the sentence which can be passed upon a conviction being recorded and the fact that this part of the sentence would be different depending on whether a Defendant had been found guilty of a section 10(1) (b) charge alleging disproportionate pecuniary resources or of a section 10(1) (b) charge alleging disproportionate property is a further indication that the word 'or' in section 10(1) (b) should be read disjunctively.
- 11** The Court of Appeal held contrary to this Appellant's contention that the charge was not bad for duplicity. It is submitted that in so holding the Court erred in law.
- 12** The Court of Appeal further held in acceptance of this Appellant's submission made in alternative to that referred to in paragraph 10 hereof that the word 'or' should be given a disjunctive meaning in section 12(3) and that accordingly the Court could not make an Order under both section 12(3) (a) and (b). Accordingly the Court made an Order with respect to unexplained property only. It is submitted that in so holding the Court was correct in law.
- 13** In the above premises this Appellant appeals against the decision of the Court of Appeal that the charge was not bad for duplicity. Alternatively he submits that the decision of the Court of Appeal with respect to the Order made under section 12(3) was correct and he opposes the appeal by the Attorney-General in this respect.
- 14** This Appellant accordingly submits that his appeal should be allowed with costs or in the alternative that the appeal by the Attorney-General should be dismissed with costs.

## REASONS

1. Because the charge was bad for duplicity in that it alleged two separate criminal offences.
2. Because in the alternative to 1 the charge was bad for duplicity in that it alleged two separate criminal acts which were charged disjunctively.
3. Because the same meaning should be given to the word 'or' in section 10(1) (b) as in section 12(3) of the same Ordinance.
4. Because two separate sentences were provided for in section 12(3) for unexplained resources and unexplained property.
5. Because there was no 'contrary intention' shown in section 10(1) (b) or any other part of the Ordinance for the disjunctive meaning not to be given to the word 'or' as provided by section 3 of the Interpretation and General Clauses Ordinance.

*Anthony Sciwener QC*

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CHEUNG CHEE-KWONG	... ..	<i>Respondent</i>

**APPELLANT'S CASE**

lodged on \_\_\_\_\_ day of December, 1979

Messrs. Hampton, Winter and Glynn,  
Whelock House,  
11th Floor,  
20 Pedder Street,  
Hong Kong.

Ref: GH/C.

Messrs. Denton Hall & Burgin,  
3 Gray's Inn Place,  
Gray's Inn,  
London, WC1R 5EA.

Tel: 01-242 1212

Ref: KCC/VMW

London Privy Council Agents.