IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G 26 of 2014

BETWEEN:

ANNETTE DIANE EDEN ANDRADE

PLAINTIFF

AND:

PATRICE LEANNE FREDERICK

DEFENDANT

IN CHAMBERS

Appearances:	**Ms Laura Hatfield instructed by Bedell Cristin for the Plaintiff** **Mr Isaac Jacob instructed by Mr. Paul Keeble of Hampson and Company for the Defendant**
Before:	**Hon Mme Justice Ramsay-Hale**
Heard:	**18 August 2020**
Date of Decision:	**18 August 2020**
Written reasons Circulated in draft:	**15 January 2021**
Written Reasons Delivered:	**2 February 2021**

HEADNOTE

Statutory Interpretation - Presumption against Implied Repeal - Rule in Pepper v Hart - even if conditions of admissibility met, court must be wary of being too ready to give effect to what was said by sponsor of Bill - English Limitations Act of 1623 (21 James I, Cap 16) - Limitation period for personal injury claims in Insurance Vehicle (Third Party Risks) Law (2012 Revision) - bar of claims against the insured after three years not impliedly repealed by Limitation Law - decisions of court of co-ordinate jurisdiction not to be followed if per incuriam.

JUDGMENT

INTRODUCTION

1. On 6 January 2011, the Plaintiff, Ms Annette Andrade, was struck and injured by a motor vehicle driven by the Defendant, Ms Patrice Frederick. Ms Frederick was subsequently prosecuted for dangerous driving. Ms Andrade elected to await the outcome of those proceedings before commencing an action for damages for the injuries she sustained. The traffic matter, however, did not conclude before the end of the 3 year limitation period for personal injury claims which ended on 6 January 2014. Mr Tonner, who was then acting for Ms Frederick in the traffic matter, agreed with Mr. Allen who then represented Ms Andrade, that if the matter were filed on or before 7 February 2014, the defendant would not raise a limitation defence.

2. Mr. Allen, however, failed to issue the Writ until 20 February 2014 and Ms Frederick pleaded that the matter was statute barred as being commenced outside the 3 year limitation period prescribed by section 13 of the **Limitation Law (2006 Revision)** (hereinafter "section 13").

3. Ms Andrade applied by Originating Summons dated 9 December 2014 for the primary limitation period of 3 years in section 13 to be dis-applied pursuant to section 39 of the **Limitation Law** (hereinafter "section 39") and the time for bringing the claim extended. Ms Frederick subsequently amended her Defence to plead that the action was statute barred by section 17 of the **Vehicle Insurance (Third Party Risks) Law (2012 Revision)** (hereinafter "section 17") which prescribes a non-extendible limitation period of 3 years.

4. On 15 September 2015, Ms Frederick issued her Summons seeking relief. That Summons was amended and filed in its present form on 7 November 2016, and now seeks:

   (a) An order pursuant to **GCR** Order 18 rule (1) (a), (c) and/or (d) striking the Writ of Summons and Statement of Claim herein on the grounds that the Statement of Claim discloses no reasonable cause of action, is frivolous or vexatious, and/or is an abuse of the process of the Court, being statute barred by section 17; alternatively,

(b) An order pursuant to **GCR** Order 14 rule 12 dismissing the Plaintiff's claim as against the Defendant and entering judgment for the Defendant on the ground that the Plaintiff's claim has no prospect of success; alternatively,

(c) A determination as a point of law under **GCR** Order 14A that the Plaintiff's claim is statute barred by section 17.

5. On 18 August 2020, the matter was heard. The Court gave judgment for Ms Frederick and dismissed Ms Andrade's claim as being frivolous and vexatious and an abuse of the process of the Court as being statute barred and entered judgment for the Defendant. The Court promised to put its reasons in writing and this I do now.

THE ISSUE

6. The issue for resolution was whether section 17 of the 2012 **Insurance Law** (by which compendious term I will hereinafter refer to all iterations of the law for convenience) is the existing and operable law, so that Ms Andrade's claim was statute barred when it was filed on 20 February 2014, or whether section 17 had been impliedly repealed by section 13 as decided by McMillan J in the matter of *Bennett v Diaz (unrep)* 28 January 2020 which would permit the Court to extend the primary limitation period.

THE SUBMISSIONS

7. Ms Hatfield, who appeared for Ms Andrade, made no submissions but relied on the judgment of McMillian J in *Bennett's* case as correctly stating the law.

8. Mr Jacob, who appeared for Ms Frederick, submitted that the claim was statute barred by section 17 and invited the Court to find that McMillan J erred in ruling that section 17 had been impliedly repealed by section 13. In his submissions, which are more fully set out in the course of the judgment that follows, Mr. Jacob submitted, *inter alia*, that the learned Judge erred in that he:

(i) failed to give the words of the statutory provisions under consideration their plain and unambiguous meaning,

(ii) ruled that section 17 was impliedly repealed in the circumstances where the presumptions against repeal were not displaced,

(iii) resorted to the Hansard to resolve an ambiguity which did not exist, and

(iv) arrived at his decision *per incuriam,* as section 17, which the learned Judge held had been impliedly repealed in 1991, was amended by the Legislature in 2011.

THE DECISION IN <u>BENNETT v DIAZ</u>

9. The following facts appear from the Judgment: Ms Bennett was injured in a traffic accident which occurred on 24 February 2012 when the motor vehicle she was driving was rear ended by the vehicle driven by Mr. Diaz. The Police Incident Report issued by the Crime Desk of the Royal Cayman Islands Police Service on 19 February 2013, indicated that Mr. Diaz accepted fault for the accident. At the time of the accident, Ms Bennett was a Jamaican national residing in Cayman under the terms of a work permit. Her permit expired in November 2013 whereupon she returned to Jamaica. A letter before action written on 15 July 2015 was followed by the issue on 27 November 2015, of an Indorsed Writ claiming damages for personal injury, almost 4 years after the accident.

10. Before McMillan J, Ms Bennett sought a determination of the question whether the Writ was statute barred as having been issued outside the strict three year limitation period mandated by section 17. The learned Judge determined that the claim was not statute barred on the ground that section 17 had been impliedly repealed by section 13.

11. The learned Judge's decision was contrary to the prevailing view that the **Limitation Law** had no application to injury to persons arising out of motor vehicle accidents. This also found expression in two earlier decisions of the Grand Court in which it was held that section 17 superseded section 13. The first of these decisions was the decision of Foster J (Ag) in *Cole v NEM*[1] in which the learned Judge stated that section 17 *"supersedes the provisions of the Limitation Law in relation to personal injuries sustained in an accident involving a motor vehicle required to be insured pursuant to the Vehicle insurance (Third Party Risks) Law."* The second was the decision of Mangatal J in *Woods v Thompson and Saxon MG Insurance Company Ltd*[2] in which she cited the decision in *Cole* and held that Foster J (Ag) had been *"plainly" correct* to hold

[1] (2009) CILR367 at para 12
[2] (2016) 2 CILR 1at para 43

that proceedings for personal injury against the insured had to be brought within the limitation period in section 17.

12. Both decisions were dismissed by McMillan J in arriving at his conclusion that section 17 had been impliedly repealed by section 13. The judge held that it "*was factually incorrect*" for Foster Ag J to hold that section 17 superseded section 13 [3] and that Mangatal J had assumed that Foster J was correct without examining the matter and without questioning Foster J's central assumption that section 13 was superseded section 17, when in fact it was not.[4]

13. McMillan J further noted that the question of whether there had been an implied repeal of section 17 had not been raised with the consequence that neither judge[5] had, therefore, had the opportunity to consider it.

DECISIONS OF COURTS OF CO-ORDINATE JURISDICTION

14. I am not bound by the decision of McMillan J, as indeed he was not bound by the decisions of Foster and Mangatal JJ, but convention dictates that I should follow the decision of a judge of co-ordinate jurisdiction not only as a matter of comity but also because there is merit in promoting consistency in judicial decisions. *In re Spectrum Plus Ltd* [6] Morritt VC said this:

> *"I do not doubt that comity is one reason for the rule or convention. In my view, there is another, more compelling reason, namely certainty. Unless the second judge is convinced the first was wrong, his contrary decision merely creates uncertainty. If, by contrast he leaves the issue to the Court of Appeal, the decision of that court whichever way it goes will...bind all lower courts as well as the Court of Appeal itself."*

15. If the decision is of a judge of first instance is long-standing then, as stated in Halsbury's Laws of England (5th Edn) Vol.11 at para 33, it ought to be followed by another judge of first instance, at least in a case involving the construction of a statute of some complexity, unless the judge is fully satisfied that the previous decision is wrong.

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[3] *Bennett v Diaz* para 97
[4] Ibid para 132
[5] Ibid Para 96
[6] [2004] 2W.L.R. 783 para8

16. With respect to McMillan J's decision in *Bennett,* many of these considerations do not arise: the decision is of recent vintage, it has not been appealed nor, so far as I am aware, has it been followed, the decision was itself a departure from the decisions of two co-ordinate courts as to the effect of section 17 and finally, no decision is binding if rendered *per incuriam* because a statutory provision was not brought to the court's attention and the decision was as a consequence given in ignorance of the existence of that provision, as Mr. Jacob submits occurred in this case.

THE STATUTORY PROVISIONS UNDER CONSIDERATION

17. Before attempting to summarise my learned colleague's decision without, I hope, doing too much violence to the text or substance of his judgment, I set out the statutory provisions which are in issue:

Section 17 provides:

> ***"Limitation of actions***
>
> *"17. Notwithstanding anything contained in any other law or in any rule of law or equity, no action shall be brought in any court by or on behalf of any person after the end of the period of three years from the date on which a cause of action accrued for any injury or damage against or in respect of which a vehicle is required to be insured under this Law."*

18. Part II of the **Limitation Law** is headed ***"Ordinary Time Limits for Different Classes of Action."***

Within that Part, Section 13 is in respect of ***Personal Injuries*** and it states:

> *"13. (1) This section applies to any action for negligence, nuisance or breach of duty (whether such duty exists by virtue of a contract, a provision made by or under an instrument of a legislative character, or independently of any contract of any such provision) where the damages claimed by the Plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to himself or any other person.*
>
> *(2) None of the time limits given in sections 4 to 12 apply to an action to which this section applies.*
>
> *(3) An action to which this section applies shall not be brought after the expiration of the period applicable with subsection (4) or (5)*
>
> *(4) Except where subsection (5) applies, the period applicable is three years from –*
>
> *(a) the date on which the cause of action accrued; or*
> *(b) the date of knowledge (if later) of the person injured.*
> *...*

the ordinary time limit for bringing an action for personal injury is three years from the date specified in section 13(4)(a) and (b)...."

19. Section 39 of the **Limitation Law** provides,

"Discretionary exclusion

"39. (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which - (a) section 13 or 16 prejudices the plaintiff or any person whom he represents; and (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents, the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relate"

20. Part IV of the **Limitation Law** is headed ***"Miscellaneous and General."*** Section 44 is in respect of ***Savings, etc*** as per its marginal note and states:

"44 (1) This Law does not apply to any action or arbitration for which a period of limitation is prescribed by or under any other Law, or to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by or under any such other Law.

(2) Nothing in this Law shall –

(a) enable any action to be brought which was barred before the 15th August 1991; or
(b) affect any action or arbitration commenced before the 15th August, 1991 or the title of any property which is the subject of any such action or arbitration."

21. In holding that there had been an implied repeal, McMillan J accepted the following submissions made by Mr. Neil Timms QC on behalf of Ms Bennett:

(i) That if section 13 had no application to road traffic accidents and the limitation in such cases was in fact governed by section 17, then the Court would have no jurisdiction to extend time or exercise its discretion to disapply time limits for those who discover the true nature of their injury outside the 3 year period or in any other case in which a court considered it equitable to do so, which would be unjust and anomalous. It would also be inconsistent with the transformative nature[7] of the **Limitation Law** designed, as it was, to reform tort law and inconsistent with the policy behind section 39, which was to

[7] Per Collett JA in *Cruz-Martinez v Cupidon*

relieve prospective personal injury claimants from the hardship that might result from a relatively short limitation period and to prevent injustice.

The learned Judge, in response to that submission, observed at para 71 of the judgment:

> *"In the view of the Court, this inevitably gives rise to a further question as to why hardship should be caused or putting it another way, what if any can be the statutory benefit or even the statutory intent in causing any hardship at all.* ***This surely is the paradox at the core of the Defendant's position which needs to be confronted in order to challenge and dispute the Plaintiff's case.***
>
> [my emphasis]

(ii) That victims of traffic accidents are as entitled to equity as any other personal injury victim and if section 17 applied to victims of traffic accidents, then it created an artificial and unfair distinction that was both absurd and anomalous which was not the legislative purpose.

(iii) That the case met all the criteria for when a statute is repealed by implication which are that,

(a) The entire subject matter of the provision in the first statute was taken away by the second, in this case by a Legislature attempting to set out a comprehensive code.
(b) The two provisions standing together would lead to absurd consequences; and
(c) The relevant provision of the earlier statute is plainly repugnant to that of the subsequent statute.

(iv) That the general principle that special Laws are not repealed by general Laws gives way when there is a necessary inconsistency between them, as in this case.

(v) That when a Legislature undertakes a comprehensive revision of a particular subject, this manifests a strong intent to repeal all existing laws on that subject. Implied repeal is a tool to give effect to that intent and the Court is entitled to use all the tools to determine that intent.

(vi) That while ***a savings clause*** such as that in section 17 which states *"notwithstanding anything contained in any other law or any rule of law and equity,"* may qualify the provisions elsewhere in a statute to disapply it to enactments before the statute, the legislature cannot bind its successors, so this clause was irrelevant to this case;

(vii) That if section 17 is impliedly repealed by the generality of section 13, then section 44(1) of the Law does not save section 17, as section 44(1) can only apply to a period of limitation which is prescribed by or under any other *unrepealed* Law, a submission

which the learned Judge described as *"a logical concept"* which Counsel for Mr. Diaz had failed to refute.

22. The learned judge then distilled the following points from the Court of Appeal case of *Cruz v Cupidon* on which both parties had relied:

(i) *"A careful reading of the Limitation Law focuses not merely on a literal reading but on the intent as well* (see page 180, lines 5-10).

(ii) *"When there are different and inconsistent time limits laid down for the bringing of a class of action* ***conflict*** *arises* (see page 180, lines 25-40).

(iii) *"It is important to investigate and if possible to distinguish how it is that such an unsatisfactory result has been achieved before attempting to construe the legislation as a whole* (see page 180 lines 40-45 – page 181, lines 1-5*).*

23. McMillan J then said this:

> *"This Court would only add that in this regard there is a good deal to be said for admitting extracts from Hansard to assist in that investigation and to facilitate the Court in construing the legislation as whole."*

24. The rule prohibiting the Courts from using ministerial explanations of Bills in Parliament, which are recorded in the Hansard reports of legislative debates, as an aid to the construction of Statutes was modified by the House of Lords in the decision of *Pepper v Hart*. In his speech, Lord Browne-Wilkinson set out three conditions of admissibility which should be met before recourse should be had to extracts from the Hansard for this purpose:

> *"In my judgment, subject to the questions of the privileges of The House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases, references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the statement of the Minister or other promoter of the Bill is likely to meet these criteria".*[8]

25. McMillan J, having formed the view that the competing limitation provisions with respect to personal injury claims gave rise to an absurdity, admitted the Hansard Reports of the reading of

[8] [1993] AC 593 at page 634D

the Limitation Bill by its promoter, then Attorney General the Hon. Richard Ground. The judge relied on the following exposition by the Attorney as disclosing the legislature's true intentions:

> *"Clause 13 is an important one; it is one that I would particularly draw the attention of the House to. It deals with damages in respect of person [sic] injuries that arise either because of negligence, nuisance, or breach of duty however arising. But the classic action for personal injury is the action for damages arising out of a motor car accident or a road traffic accident where the victim will be claiming against another party, the driver. I mention that as an example just to bring home, in simple language, what we are talking about. But in fact, those sections apply to all forms of action, however, they might arise in which personal injury is the essence of it.*
>
> *A special time limit is provided in the cases of personal injury and it is a time limit of three years rather than six years. Three years from the date on which the cause of action accrued, which will normally be the date on which the injury happened, in taking my earlier example the date when the car accident happened that gave rise to the injury.*
>
> *However, in some instances the person who has been injured may not know that he has been injured until later. Of course he would in a car accident, but as I stressed a moment ago this provision applies not just to those obvious forms of injury, but to all forms of action where the heart, the essence of it is harm that has been done to some person.*

(Emphasis supplied by McMillan J)

26. The learned Judge then summarised his conclusions as follows:

> *"179. The Plaintiff has shown that there is repugnance between the two statutes and that the Limitation Law is not a partially reforming statute but instead, as the Court of Appeal itself has decided, a comprehensive reforming statute.*
>
> *"180. In addition, the Plaintiff is correct in stating in substance that section 44(1) addresses situations where an action or arbitration period of limitation has been prescribed by or under "any other law", as distinct from situations where, as in this case, such other period has explicitly or implicitly been repealed. On this critical aspect of the Defendant's argument, the Defendant has misconceived both the relevant statute law and the relevant common law.*
>
> *"181. As a matter of statutory construction and interpretation alone, the Court finds at this juncture that the Plaintiff's case is proven.*

> *"182. Thirdly, out of an abundance of caution, and taking into account the public importance of the questions which have been raised, it is also necessary to have recourse to the relevant passages from Hansard. In addition to the issues of construction which have now been decided, real help as to construction is also to be found in the public pronouncements of the Honourable Mr. Ground. Based upon the specific language used by Mr. Ground the Court accepts unequivocally that the Limitation Law 1991 was intended to include and to cover personal injury arising out of road traffic accidents, including motor car accidents."*

DISCUSSION AND ANALYSIS

The Hardship Paradox

27. In seeking to persuade this court that McMillan J fell into error, Mr. Jacob extensively reviewed the legislative history of the statutes under consideration including the Hansard report of the debates that preceded the passing of the 1990 **Insurance Law.** I have therefore had the advantage of having sight of all the relevant laws and their amendments which, as it appears to me having considered his judgment, my learned brother McMillan did not. I wish to record here my gratitude to Counsel for undertaking what was an exhaustive survey of the legislative landscape.

28. I turn to a brief consideration of that legislative history as I move to consider the paradox that McMillan J identified at para 71 of his judgment.

29. The 1964 **Insurance Law** applied only to motor vehicles driven on public roads. It required, *inter alia*, that insurers satisfy judgments made against insured persons in respect of third-parties who suffered injury as a result of the use of a motor vehicle on the road. The Law, however, contained no time limits within which an action by a third party against an insured person should be commenced. The only limitation period provided was the period within which proceedings for offences under the law had to be prosecuted.

30. As explained further below,[9] the limitation period that would have applied to the 1964 **Insurance Law** was the period prescribed in the English **Limitation Act** of 1623, otherwise known as the Imperial Statute 21 James I, Cap 16, intituled *"An Act for Limitation of Actions and for Avoiding of Suits in Law"*, which was part of the received law of these Islands. This Act

[9] See discussion *ante* at para 83 et seq

provided a limitation period of 6 years for *"actions on the case"* which expression has been treated by Courts as including actions in negligence. The Act provided no discretion to extend the period.

31. The **Motor Vehicle Insurance (Third Party Risks) Bill 1990** published on 31 May 1990 proposed substantial changes to the 1964 **Insurance Law**. The Bill proposed that the insurers' liability for personal injury be increased to $1,000,000 and be extended to cover liability for damage to property up to $100,000 and up to $50,000 in respect of the death or bodily injury to a passenger on a motorcycle. The requirement that the insurers give security, which was found in the 1964 iteration of the law, was removed. Insurance policies were now required to cover a larger class of motor vehicles which included agricultural earthmoving vehicles, motorcycles, scooters, wheeled trailers and autowheels.

32. In clause 17, the Bill proposed a limitation period ***for the first time,*** limiting the period within which actions may be brought, for personal injury or property damage caused by a motor vehicle which was required to be insured, to three years.

33. Mr. Jacob exhibited the Hansard Reports of the debate on the 1990 Bill, not as a tool of construction but to show the background to the 1990 **Insurance Law.** That this is a permitted use of Hansard is set out in *Bennion* which provides at section 24.12 that Hansard may be referred to supply context or identify the mischief at which legislation is aimed.

34. The passages on which Mr. Jacob relies are reproduced below. The extracts show that the Bill was a piece of legislation on which insurers were consulted and their commercial interests taken into account.

35. The first and second reading of the Bill took place on 20 June 1990. It was promoted by the Hon. Thomas Jefferson who said,

> *"We then moved to discuss the Motor Vehicle Third Party Risks Law with the relevant body of the domestic insurance market and I believe I'm correct to say that what is before the House is, I believe I have the sixth or seventh draft, it may even be the eighth. This subject has been going around and being debated for almost 5 years and I believe that the Bill that is presently before the house, if I quoted one of them, he said "it is the best piece of Legislation on this subject in the Caribbean" I also gave notice on the fourth of this month of a committee*

stage amendment which dealt with clause 4 (1) (b) (viii). This area providing liability coverage for passengers who are sitting on the back of a motorcycle owned by an individual was discussed at an informal luncheon with representatives of the insurance industry where they undertook to look at the matter and as a result put forward a figure of $25,000 as a coverage. We urged them to do $50,000 and there was no disagreement at that point, but since that time they had carried out their own feasibility study of providing this liability coverage and the possibility of re-ensuring a portion of this liability and have come up with their finding that the liability is not reinsurable, or they cannot find anybody to reinsure it for them. As a result committee stage amendment is seeking to delete the coverage of $50,000 because in essence, if they undertook to write that coverage, they would commit themselves to liability for which they would not be able to receive from a premium, whether the premium was $3000 or $4000 a year. This Bill before the Houses taking a giant step forward away from the 1964 Legislation and perhaps in times to come can again look at this liability coverage or perhaps they can find another method of covering that liability... I think in all business deals a man is not going to sell you a product which is going to in essence, suffer him a loss and I think it is really as simple as that."

36. The Bill was passed on 18 July 1990 but the bringing into force of the 1990 **Insurance Law** was delayed to include amendments which the insurance industry sought. These amendments which were set out in the **Bill for a Law to Amend the Motor Vehicle Insurance (Third Party Risks) Law 1990** related to the definition of the expression *"policy of insurance"* to include a certificate of insurance or cover note and, as what could only have been a matter of assistance to insurers in light of the Hon Minister's comments, an amendment to relieve insurers of the obligation to provide cover for the death of, or bodily injury to, a passenger on a motorcycle.

37. In his address to the legislature, the Hon. Minster said,

> *"The Law which was passed in the summer of last year had two little "bugs" in it and as a result, the insurance industry did make representation to me to ask that the Bill not be gazetted and that these amendments be made to the Law." [He then set out the amendments] "... At the present time we are still operating under the Motor Vehicle Insurance (Third Party Risks) Law 1965."*

38. The Bill had its first, second and third readings and was passed on 8 March 1991Both the 1990 **Insurance Law** and the amending law were gazetted and came into force on 6 May 1991.

39. It seems to me that the policy underlying the law was to provide liability coverage for third parties who suffer personal injury and property damage caused by insured vehicles which was

palatable to insurers. The scheme of the law, which in addition to providing a limitation period also required that the insurer be notified of any claim filed with the Court within 30 days, appears to have been intended to give commercial certainty to insurers that claims arising from motor vehicle accidents would be filed within a certain time and that there would be, as Mr Jacob put it, "*an end point to their liability*". If there were a discretionary period of limitation, as found in sections 13 and 39, insurers would have financial exposure to claims for an indefinite period of time.

40. I note further that it is unlikely that a non-extendible or 'hard' limitation period would cause hardship as the date on which the cause of action consequent on a motor vehicle accident accrues and the date of knowledge of the person injured (or his next friend, if he is under a disability) will be the same, unlike personal injury arising from other causes which may remain undiscovered for years, perhaps the most notorious of which is mesothelioma, with an onset of the disease decades after exposure to asbestos.

41. The *'paradox'* identified by McMillan J of having two provisions - one which would cause potential hardship by enforcing a strict limitation period and one designed to avoid such hardship - may thus be explained by the Legislature's attempt to strike that balance between the potential hardship to third parties of a 'hard' limitation provision and the commercial interests of the Insurers, in the circumstances where the injury or property damage suffered in a road traffic accident is usually immediately apparent.

42. In any event, just because a Court perceives such a distinction to produce an unfair result, that is not sufficient to reject it as absurd.

43. It follows that I disagree with my learned colleague that there was a paradoxical and absurd statutory intent in section 17 to cause hardship which was inconsistent with the section 13 intention to ameliorate it.

Application of the Doctrine of Implied Repeal

44. The common law doctrine of implied repeal provides, as set out in *Bennion, Statutory Interpretation,* that where the provisions of a later Act are inconsistent with the provisions of an earlier Act, the earlier provisions may be impliedly repealed by the later:

"Where a later enactment does not expressly repeal an earlier enactment which it has power to override, but the provisions of the later enactment are contrary to those of the earlier, the later by implication repeals the earlier in accordance with the maxim leges posteriors priores contrarias abrogant (later laws abrogate earlier laws). This is subject to the exception embodied in the maxim generalia specialibus non derogant..."

45. This maxim is summarised in Halsbury's as follows:

"It is difficult to imply a repeal where the earlier enactment is particular, and the later general. In such a case the maxim generalia specialibus non derogant (general things do not derogate from special things) applies. If Parliament has considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision; and therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case in question, it is prima facie to be construed as not so extending. The special provision stands as an exceptional proviso upon the general. If, however, it appears from a consideration of the general enactment in the light of admissible circumstances that Parliament's true intention was to establish thereby a rule of universal application, then the special provision must give way to the general."

46. There is a general presumption against implied repeal, the strength of which varies according to the context. As Lord Hope observed in *H v Lord Advocate*:

"In any event, the courts presume that Parliament does not intend an implied repeal: Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd [2001] QB 388, 405, per Arden LJ. In modern times, when standards of parliamentary draftsmanship are high, the presumption against implied repeal is strong: Nwogbe v Nwogbe [2000] 2 FLR 744, para 19, per Walker LJ. And it is even stronger the moreweighty the enactment that is said to have been impliedly repealed: Bennion on Statutory Interpretation, 5th ed (2008), p 305."

47. The test for implied repeal was set out by Smith J in *West Ham (Churchwardens, etc) v Fourth City Mutual Building Society* [10]:

[10] [1892] 1 QB 654

> *"The test of whether there has been a repeal by implication by subsequent legislation is this: are the provisions of* ***a later Act*** *so inconsistent with, or repugnant to, the provisions of an earlier act that* ***the two cannot stand together?"***

48. In *Thoburn v. Sunderland City Council* [11] Laws LJ stated:

> *"The rule is that if Parliament has enacted successive statutes which on the true construction of each of them make irreducibly inconsistent provisions, the earlier statute is impliedly repealed by the later. The importance of the rule is, on the traditional view, that if it were otherwise the earlier Parliament might bind the later, and this would be repugnant to the principle of Parliamentary sovereignty."*

(i) A later law

49. I would start by noting that ascribing the term *"later law"* in the sense used by Laws J in *Thoburn's* case to the 1991 **Limitation Law** would be to mischaracterise it, given that both the 1990 **Insurance Law** and the 1991 **Limitation Law** were brought into force within months of each other.

50. Returning again to Mr. Jacob's review of the legislation, one notes the following sequence that shows the two laws were essentially being made in tandem:

- The 1990 **Insurance Law** was still under consideration by the Legislature in 1991 as amendments to it were being proposed.
- The Bill to amend the 1990 **Insurance Law** had its first, second and third reading and was passed on 8 March 1991.
- A month later, on 8 April 1991 the **Limitation Bill** was published.
- Both the 1990 **Insurance Law** and the law amending it were gazetted and came into force on 6 May 1991.
- Just over a month later, on 19 June 1991, the Limitation Bill had its First and Second Reading.
- On 3 July 1991 the Limitation Bill had its Third Reading and was passed.

[11] [2003] QB 151 at page 176

- The **Motor Vehicle Insurance (Third Party Risks) Regulations** were made on 10 July 1991 and gazetted on 29 July 1991.
- On 15 August 1991 the **Limitation Law** was gazetted and came into force.

51. The importance of the principle that one legislature cannot bind another, which underlies the rule that a later inconsistent statute impliedly repeals an earlier one, hardly comes into play here as section 17 and section 13 were brought into force by the same Legislative Assembly in the same year.

52. Of course, the legislature may well have intended a repeal, but in the circumstances where the laws were considered, enacted and brought into force in such proximity, bearing in mind Lord Hope's observation of the high standards of parliamentary draftsmanship in modern times, one might have expected section 17 to be the subject of an express rather than implied repeal.

(ii) Can Section 17 and section 13 stand together?

53. In his decision, McMillan J held that section 17 and section 13 could not stand together as section 17 was inconsistent with, and repugnant to, section 13 and with the consistent design and policy of the 1991 **Limitation Law** which was, in his view, intended to create one limitation regime for all personal injury cases.

54. In his submissions before me, Mr. Jacob asserts, that just the opposite is true and that the two provisions can stand together in that section 13 can continue to operate in every situation save for the one provided for by section 17.

55. More particularly, Mr. Jacob submits that section 17 applies only to *"a cause of action . . . in respect of which a vehicle is required to be insured under this Law."* The provision immediately excludes from the scope of the **Insurance Law** any injury caused through nuisance or negligence **not** involving a vehicle *"required to be insured"*. Thus, it excludes injuries caused by a motor vehicle of any sort driven on private land. It excludes public service vehicles to which other provisions apply. It excludes all the vehicles and situations to which the proviso to section 4 of the **Insurance Law** applies. It excludes personal injuries caused by medical negligence, by defective products, by damage done by animals, *Rylands v Fletcher* cases, in defective premises, through assault, nuisance, harassment, false imprisonment and intentional physical harm,

accidents on or relating to boats and aircraft whether private or commercial, accidents involving water, accidents resulting from breach of duty under employment contracts and contracts involving care situations, among others. In all of those situations, where personal injury occurs, section 13 of the **Limitation Law** will continue to apply.

56. Mr. Jacob is undoubtedly correct. I can see no inconsistency or repugnancy between the two provisions which for the reasons Counsel sets out, not only can stand together but have stood together since 1991.

57. McMillan J found the distinction between personal injury claims based on the tortfeasor to be both absurd and anomalous. The distinction is plainly not absurd as the two provisions can operate together. Even if it were anomalous, the presumption against implied repeal would not be displaced. As stated by Lord Buxton in the case of *Regina v Secretary of State for the Environment, Transport and the Regions ex parte O'Byrne* [12] which was relied on by Counsel in *Bennett,*

> *"The presumption against **anomaly** is, as Bennion makes clear in section 315, a principle of construction, **applied as such within the boundaries of an individual Act**, and **going much wider than the case of absurdity or impossibility of reading two Acts together that is the characteristic of implied repeal.** To hold that an implied repeal arose when the combined result of the two statutes could not be characterised as anything worse than anomaly would be to fly in the face of the strong statements of principle set out in [the West Ham case]"*

(iii) General versus Specific Provision

58. As I've noted earlier, the presumption against implied repeal is particularly strong where a general provision in a later statute covers a situation for which specific provision has been made by the legislature in an earlier one.

59. In my judgment, section 17 falls precisely into that category of "*specific provision made by another enactment*" which strengthens the presumption against implied repeal. Section 13

[12] [2001] EWCA Civ 499 at para 26

covers personal injury resulting from negligence, nuisance or breach of statutory duty howsoever occurring and in every possible context, as Mr. Jacob submits, whereas section 17 speaks only of personal injury sustained in road traffic accidents.

60. It is not right to say, as was submitted before McMillan J, that the entire subject-matter of section 17 was taken away by section 13.[13] Section 17 limits the insurers' liability for personal injury *and* damage to property caused by vehicles which are required to be insured. Property damage does not fall within section 13 at all. There is a patent difference in the scope and reach of section 13 and section 17 to which Counsel in *Bennett* did not advert.

61. If section 17 had been impliedly repealed with respect to personal injury, the result would be that claims in respect of property damaged in a motor vehicle accident would have a different limitation period than claims for personal injury arising out of the same event, a distinction that would be anomalous and which I do not believe the Legislature, in enacting section 17, intended.

(iv) Section 44(1) and the decision in *Cruz-Martinez v Cupidon*[14]

62. It is a principle of statutory construction that a statute must be construed as a whole. The question of whether section 13 impliedly repeals a limitation provision found in an earlier law, necessarily raises the question as to the meaning and effect of the savings clause in section 44(1) which provides as follows:

> *"(1) This Law **does not apply to any action** or arbitration **for which a period of limitation is prescribed by or under any other Law**, whether passed before or after the date of commencement of this Law..."*

63. Giving the words of the section their ordinary meaning, it seems to me that section 44(1) would operate so as to save the limitation period for personal injury in respect of a vehicle required to be insured prescribed in section 17 to which section 13 might otherwise apply.

64. In his decision, McMillan J took a different view of section 44(1) and its application to section 17 based on his analysis of the decision of the Court of Appeal in *Cruz-Martinez v. Cupidon.*[15]

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[13] *Bennett* at para 78

[14] 1999 CILR 177 CICA

65. The facts of that case are that on 16 July 1993, the deceased was seriously injured when he was knocked off his bicycle as a result of a collision with a vehicle driven by the defendant. It was alleged that as a direct result of the accident and the injuries suffered by the deceased, he committed suicide on 15 March 1995. At the time of his death, no proceedings had been instituted by him in respect of his injuries. On 13 June 1996, letters of administration were granted to his mother, the plaintiff. On 4 March 1997, a Writ was issued claiming damages under the **Estates Proceedings Law (1995 Revision)** and under the **Torts (Reform) Law (1996 Revision).**

66. The defence pleaded that the claims were statute barred. The claim under the **Estates Proceedings Law** was said to be barred because the deceased had not instituted proceedings before he died and the cause of the action had accrued more than one year before his decease.

67. Section 5 of the **Estates Proceedings Law** states:

> *"No proceedings shall be maintainable in respect of a cause of action in tort under section 2 unless-*
>
> *(a) proceedings were pending at the date of the death; or*
>
> *(b) the cause of action arose not earlier than one year before death and suit is filed in court in respect thereof not later than one year after the representative or representatives took out representation."*

68. Section 13(5) of the **Limitation Law,** however, provided a different period of limitation:

> *"(5) If the person injured dies before the expiration of the period mentioned in subsection (4) , the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 2 of the **Estates Proceedings Law (1995 Revision)** shall be three years from*
>
> *(a) the date of death; or*
> *(b) the date of the personal representative's knowledge, whichever is the later."*

69. **The Torts (Reform) Law (1996 Revision) Part II** concerns fatal accident claims. Section 4 enables an action to be filed by a personal representative for the benefit of a dependant (as defined in

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[15] 1998 CILR 216

the law) and provides that all actions under this Law *"shall be commenced within one year of the death of such deceased person"*. The defendant argued that the proceedings were time-barred as having been commenced after the expiration of one year from death.

70. Section 16 (2) of the **Limitation Law,** however, prescribes that all claims pursued under Part II of the **Torts (Reform) Law** be brought within 3 years from the date of death or date of knowledge of the person for whose benefit the action is brought, whichever is later.

71. The provisions were plainly contradictory. The defendant, Cupidon, sought to rely on section 44(1) as preserving the existing limitation periods in the laws under which the proceedings had been brought.

72. In giving the judgment of the Court of Appeal, Collett J.A. said this:

> *"In the light of the analysis already undertaken of the historical differences between the two jurisdictions, I am not impressed by the argument that the Cayman Legislative Assembly has deliberately opted to preserve the old periods of limitation. I prefer the route of purposive construction. But how can this be reconciled with the manifest need to give effect to every provision of the 1991 Law including, specifically, s.44 (1) and s.16 (3)?*
>
> *The answer, I am convinced, lies in the examination of the purpose of s.39 of the English Limitation Act 1980 which, as we have already seen, was the draftsman's model for s.44(1) of the 1991 Cayman Law. The commentary on s.39 in 24 Halsbury's Statutes, 4th ed. (1989 Reissue), at 695 supplies a most helpful list of some 18 public general statutes of the United Kingdom which provide for particular limitation periods applicable to those specific statutes, none of which are mentioned by name or number in the 1980 Act itself. There are, in Cayman Legislation, also many enactments which include such specific limitation periods quite apart from the Torts (Reform) Law (1996 Revision) and the Estates Proceedings Law (1995 Revision). Upon the premise that the draftsman of the 1991 Cayman Law and the Legislative Assembly were under the impression that s.44(1) was accomplishing no more than the English Parliament had done by enacting s.39 of the 1980 Act, it is logical to confine the effect of s.44(1) to the accomplishment of a similar purpose here.*
>
> *What is required, therefore, is to refine* ***s. 44(1) by qualifying the reference to "any other Law" so as to read: "any other Law except a Law expressly referred to herein," thereby excluding from the ambit of the savings clause the Law of Torts Reform Law and the Estates Proceedings Law, 1974, both of which receive express mention in ss. 16 and 13 respectively.*** *The justification for this approach is the necessity of giving effect to every provision of the 1991 Law,*

consistently with its manifest reformatory purpose. That approach can also be justified when tested by the well-recognized "mischief rule" of construction."

[my emphasis]

73. Before McMillan J, Mr. Wingrave who appeared for the defendant Diaz, advanced the proposition that the *ratio* of the decision in *Cruz* was that only laws expressly referred to in the **Limitation Law** were not saved by section 44(1) and, since the **Insurance Law** was not referred to, section 44(1) operated to save the limitation period in section 17.

74. McMillan J dismissed the submission as failing to address the absurdity which resulted from two inconsistent provisions dealing with the limitations of actions for personal injury. He characterised Mr. Wingrave's proposition as a *"distorted analysis which ignored the broad purposive methodology favoured by the Court of Appeal"* and concluded as follows:

> *"... as becomes evident from reading the Hansard extracts, there is a reason that the Insurance Law is not mentioned in the Limitation Law. The reason that is that it was never the legislature's intent to preserve section 17, but instead to provide for the public good a limitations scheme that was clear, unitary, comprehensive and reformatory. In other words, section 17 of the Insurance Law is not mentioned in the Limitation Law because there is good reason not to mention it and where there is no reason to mention it because it falls away then in these circumstances and in that context section 44 (1) has no surviving application."*

75. In other words, that applying the purposive approach to the construction of the **Limitation Law**, the **Insurance Law** was not referred to in the **Limitation Law** because it had been impliedly repealed by section 13 with which it was repugnant - as confirmed by the Hansard extracts - and consequently, there was nothing for section 44(1) to save.

76. It seems to me, however, that if one were to apply the purposive approach to construction favoured by the Court of Appeal, one would inevitably arrive at the opposite conclusion. In *Maunsell v Olins* [1975] AC 16[16], Lord Simon set out the approach the Court should take:

> *"The first task of a court of construction* ***is to put itself in the shoes of the draftsman – to consider what knowledge he had*** *and, importantly, what statutory objective he had ...being thus placed* in *the shoes of the draftsman, the*

[16] Not cited by Counsel but I do not believe it is controversial

court proceeds to ascertain the meaning of the statutory language In this task 'the first and most elementary rule of construction' is to consider the plain and primary meaning ... of the words used..."

77. Had the Judge been able to put himself in the shoes of the draftsman and consider what knowledge the draftsman had, he might not have been persuaded that the **Limitation Law** was as submitted by Counsel for Bennett, aimed at *"...mischief [of] the unfairness of subjection [sic] accident victims to a strict limitation period"* which it had enacted 43 days before.

78. The draftsman would have known that when section 17 was passed in 1990, it introduced for the first time a limitation period for actions for personal injury or damage to property caused by motor vehicles, that amending the 1964 **Insurance Law** had been debated for 5 years, that the Bill which was passed by the House was either the seventh or eighth draft and that the law had not yet been gazetted when the Limitation Bill was published.

79. Thus placed in the draftsman's shoes, it would be plain that the statutory objective of section 44(1) was to save section 17, consistent with the plain meaning of the words used in that section. The presumption against implied repeal would be overwhelming.

80. McMillan J did not, however, have the advantage of an accurate survey of the divers limitation provisions relating to personal injury. It appears to me, from the judgment, that Counsel in *Bennett's* case failed to point out to the learned Judge that the three year limitation period in section 17 was introduced for the first time in 1991. This is the inference I draw from the judge's observation that,

*"The Motor Vehicles Insurance (Third Party Risks) Law of the Cayman Islands was originally enacted in 1964. **It was re-enacted in 1990.** The current version is the Vehicle Insurance (Third Party Risks) Law 2012 Revision) ("the Insurance Law"). For present purposes **the formal wording of the relevant provisions has remained unchanged.**"*[17]

81. I note here too the learned Judge's observations at para 44 and 45 of his judgment, that

"Section 17, upon which the Defendant relies, deals with Limitation of Actions and it states as follows:

[17] Para 29

> *"17.Notwithstanding anything contained in any other law or in any rule of law or equity, no action shall be brought in any court by or on behalf of any person after the end of the period of three years from the date on which a cause of action accrued for any injury or damage against or in respect of which a vehicle is required to be insured under this Law."*
>
> *"However as Mr. Neil Timms QC on behalf of the Plaintiff has perceptively pointed out at the time the Insurance Law became law* ***there was no statutory scheme in the Cayman Islands to cover inter alia torts or personal injury litigation.*** *It was only a year later that what he describes at paragraph 25 of his Written Submission as a comprehensive Limitation Law was introduced."*
>
> [emphasis mine]

82. With respect, Mr. Timms' submission was incorrect. The true position is that at the time section 17 was enacted, the English **Statute of Limitations** of 1623 was the operative statute in these Islands. When promoting the Limitation Bill, it was to this statute that the Hon. Attorney General referred as *"inherited from Jamaica in 1962", "rather archaic" and* as *"singularly unhelpful in that it refers us back to a statute* ***dating from the time of King James I, which is now more than 350 years old and was written in an archaic form of legal French that no one can now understand."***[18]

83. It may be that both Mr. Timms and the learned Judge were influenced by the Attorney General's assertion that the 1623 Act provided no limitation period for what we know today as torts but this assertion was wrong. The 1623 Act has been construed by the Courts in Jamaica, where it is still operative, as applying to torts and, more particularly, as limiting the period within which actions for personal injury arising from negligence may be commenced.

84. Section 3 of the **1623** Act provides that:

> *"And be it further enacted, That all actions of trespass quare clausum fregit, all actions of trespass, detinue, action sur trover, and replevin for taking away of goods and cattle, all actions of account,* ***and upon the case****, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty; all actions of debt for arrears of rent, and all actions of assault, menace, battery, wounding and imprisonment, or any of them which shall be sued or brought at any time after the end of this present session of parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after (that is to say) (2) the said actions upon the case (other than for slander) and the said actions for account, and the said actions for trespass, debt, detinue and replevin for goods or cattle, and the said*

[18] Cited by McMillan J at para. 102

action of trespass quare clausum fregit, within three years next after the end of this present session of parliament, ***or within six years next after the cause of such actions or suit, and not after;*** *...'*
[emphasis mine]

85. In *Lance Melbourne v Wan*, 22 JLR 131 at p135, Rowe P, a former Judge of Appeal of the Cayman Islands and then President of the Jamaican Court of Appeal, construing section 3 of the Statute of Limitations of 1623, said this:

> *"No uniform period of limitation was prescribed for all forms of action. A distinction was drawn between "actions upon the case" on the one hand and "actions of trespass, assault, battery, wounding and imprisonment" on the other hand. In respect of actions upon the case the primary rule was that a six year period of limitations is created, whereas in assault the period was only four years. Actions upon the case was sub-divided into two groups, viz., "slander" and "other actions upon the case"."*

> *"As the law now stands there is for Jamaica a rigid rule that actions for negligence must be brought within a period of six years from the time the cause of action arose and any failure to do so will render the action statute barred."*

86. More recently, in the matter of *Grant v Mclaughlin and Malcolm* [2019] JMCA Civ 4 the Court of Appeal of Jamaica again considered the effect of section 3 of the 1623 Act. Brooks JA said this:

> *"30. It is well established in this jurisdiction that actions grounded in tort and in contract are time barred after the expiry of six years. The authority usually cited for that principle, in the case of tort, is Melbourne v Wan (at page 135 F). This court also discussed the principle in Bartholomew Brown and Another v Jamaica National Building Society[2010] JMCA Civ 7, and explained that the limitation period for both contract and tort is six years. K Harrison JA, in delivering the judgment of the court stated, in part at paragraph [40] that:*
>
> > *"...actions based on contract and tort (the latter falling within the category of 'actions on the case') are barred by section III, subsections (1) and (2) respectively of the [English Limitation of Actions Act 1623 (21 Jac I Cap XVI), which has been received into Jamaican law] after six years (see Muir v Morris (1979) 16 JLR 398, 399, per Rowe JA)."*[19]

87. So there was in fact, contrary to the assertions of the Hon. Attorney General in the debate on the Limitation Bill, a 6 year limitation period for personal injury in respect of actions founded

[19] These cases were not cited by Counsel. I did not invite submissions as the point made in them is, I think, uncontroversial.

"upon the case," before the limitation periods for personal injury in sections 17 and 13 were introduced.

88. The **Limitation Law** was indeed a reformatory statute aimed at a wholesale transformation of a law which was archaic. But section 17, brought into force in the same year, also had a reformatory purpose and, like section 13, it introduced a three year limitation period for personal injury. The only difference was that section 17 barred claims against the insured after three years, whether because of the immediacy of injury or property damage resulting from a motor vehicle collision or in order to balance the commercial interests of insurers as against the persons who suffered injury as a matter of policy.

89. In my judgment, the draftsman clearly had the limitation periods in the 1623 Act in mind when section 17 was drafted in the following terms:

> *"Notwithstanding anything contained in any other law or in any rule of law or equity, no action shall be brought in any court by or on behalf of any person after the end of the period of three years...."*

90. If there were no limitation period affecting actions for personal injury "*in any other law*", the words at the beginning of the section would have been otiose.

Statutory Construction and the Rule in *Pepper v Hart*

91. It is a fundamental principle of construction of statutes that courts give effect to the words used. The principle is set out in *Bennion* [Section 8.8] as follows:

> *"The legal meaning of an enactment is the meaning that conveys the legislative intention. The legislative intention is the meaning attributed to the legislator in respect of the words used."*

92. It has been expressed by a number of Courts in a number of ways. In the *Sussex Peerage Case*[20] the Court stated,

> *"The only rule for construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the*

[20] 1844; 11 Cl &Fin 85

Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone do, in such a case, best declare the intention of the law giver."

93. The principle was more recently illumined by the House of Lords in R *v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd.* Lord Nicholls said this[21]:

> *"Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful so long as it is remembered that the "intention of Parliament" is an objective concept, not subjective.* ***The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the Legislation.*** *Nor is it the subjective intention of the draftsman, or of individual members or even a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the Legislation and of the words used may be impressively complete or woefully inadequate. Thus, when the courts say that such-and-such a meaning "cannot be what Parliament intended", they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning. As Lord Reid said in Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG:*
>
> *"We often say that we are looking for the intention of Parliament, but that is not quite accurate.* ***We are seeking the meaning of the words which Parliament used."***
>
> [emphasis mine]

94. In *Ming v R* [2009] CILR Note 28, to which McMillan J referred in the course of his judgment, the Court of Appeal stated:

> *"Moreover, it was not the proper role of the Court to give effect to what "the Legislature must have intended" when on a proper construction of the provision in question that intention could not be discerned. The role of the Court was to interpret the legislation as it had been enacted rather than determining what might have been enacted had the draftsman been more skillful. It was not for the court to legislate under the guise interpretation and any mistakes were for the legislature to correct."*

[21] [2001] 2 AC 349 at 396

95. It is only when, as Browne-Wilkinson stated in *Pepper v Hart,* the words used in the primary legislation are ambiguous or obscure or lead to an absurdity when given their literal meaning, that recourse to Hansard may be had in order to discern the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words.

96. In my judgment, and as Mr. Jacob rightly submitted, giving the words their ordinary meaning, there was no ambiguity in section 17, section 13 or section 44(1) and no absurdity resulting from the distinction between sections 17 and 13 that would permit the Judge to admit the extracts of the debate on the Limitation Bill under the rule in *Pepper v Hart.* It follows then that I consider that the learned Judge fell into error in so doing.

97. I would go further and say that, in my view, the decision in *Diaz v Bennett* exemplifies the danger of having recourse to Hansard where the words used are not ambiguous, that danger being that the promoter's words may be used first to establish an ambiguity in a statute and then to interpret that same statute.

98. I consider in terms that this is precisely what the Judge was invited to do by Counsel for Ms Bennett when he made the following submission:

> *"We submit it is plain that the comprehensive scheme of the Limitation Law was intended to succeed any other regime for tort limitation such as in s.17.* ***The saving clause*** (i.e. section 44(1)) ***was not included to preserve the 1990 Insurance Law provision.*** *The matter is put beyond doubt by the* ***official record of the Legislative Assembly relating to the introduction of the Limitation Law 1991 that specifically and expressly shows the Law was intended to apply to the victims of traffic accidents***. It demonstrates the inconsistency of any other construction with the legislative purpose."
>
> [my emphasis]

99. Had the Court not resorted to Hansard, it would have construed the legislation as a whole and given section 44(1) - the savings clause - its ordinary meaning of saving any limitation period *"prescribed by or under any other Law,"* which would have included section 17. Instead, the infelicitous example used by the Attorney General to illustrate what was meant by personal

injury in section 13[22] sowed confusion where the statutory language was clear and caused the Court to construe the legislation piecemeal, first determining that section 17 had been impliedly repealed by section 13 and then holding that there was no longer a limitation period in the **Insurance Law** on which section 44(1) could bite.

100. The observations of Lord Neuberger in the case of *Williams v Central Bank of Nigeria* [2014] 2 WLR 355, 387 are a salutary reminder of the limits of the rule and the purpose for which Hansard may be admitted as well as the caution with which the Court should approach the statements of a Bill's promoter:

> *"103. In support of the wider meaning of section 21(1)(a), reference was made to the 1936 Report and what was said in Parliament when the Bill which became the 1939 Act was introduced by the Solicitor General. In that connection, provided certain requirements are satisfied, the contents of the 1936 Report and what was said in Parliament can be raised as an aid to interpretation.*
>
> *"104. However, one must not lose sight of four important factors in that connection. First, the court's constitutional role in any exercise of statutory interpretation is to give effect to Parliament's intention by deciding what the words of the relevant provision mean in their context. Secondly, it follows that, in so far as any extraneous material can be brought into account, it is only as part of that context. Thirdly, before such material can be considered for the purpose of statutory interpretation, certain requirements have to be satisfied – see eg per Lord Mance in The Presidential Assurance Co Ltd v Resha St Hill [2012] UKPC 33, para 23 and per Lord Browne-Wilkinson in Pepper v Hart [1993] AC 593, 640. Fourthly,* ***even where those requirements are satisfied, any court must be wary of being too ready to give effect to what appears to be the Parliamentary intention from what was said by the authors of a report or by the sponsors of the relevant Bill: one cannot always be sure that what they say has been read or heard, or accepted, by the Parliamentarians who voted in favour of the provision in question.***

101. The purpose of introducing the **Limitation Law** was, in the words of its promoter,*"to remedy the archaism of the existing Law"* - the Act of 1623 - and to make general provision, *inter alia,* for actions for personal injury. That was the mischief at which it was aimed, not the putative

[22] Para 25 *supra*

mischief of a non-extendible limitation period for actions for personal injury caused by vehicles which must be insured which had been enacted mere months before.

The Law Revisions and the 2011 Amendment to the Insurance Law

102. The **Insurance Law** has been revised on numerous occasions. Before McMillan J, the defendant in *Bennett's* case sought to rely on the fact that section 17 was to be found in every iteration of the law. McMillan J accepted as correct the analysis of Counsel for Ms Bennett who submitted that :

> *"The fact that the 2012 Insurance Law postdates the Limitation Law is irrelevant. The 2012 Insurance Law and the relevant preceding Laws following the 1990 Insurance Law were revisions under the Law Revision Law now itself in its 1999 Revision. A Revision is a re-publication and there is no power to alter or amend any matter of substance. The Governor in Council may omit only parts that have expired, become spent or already had their effect. Plainly when revised neither the Governor in Council nor the Legislative Assembly had drawn to its notice any question of implied repeal.* ***If s.17 was impliedly repealed at the moment the 1991 Limitation Law was enacted, all that has happened is the reproduction of a repealed clause."*** **[my emphasis]**

103. It does not appear from the judgment, however, that section 3 of the **Law Revision Law**, which deals with the force and effect of such revisions, was cited to the learned Judge by either attorney.

104. Section 3 provides as follows:

"Definitions

2. *In this Law —*

"law" includes regulations and Rules of Court.

Cabinet may authorise republication of laws in revised form

3. ***The Cabinet may authorise the republication of any existing law in amended or revised form as hereinafter provided and such law shall in its revised form be, for all purposes, the only proper version of such law in the Islands:***

Provided that nothing in this section shall be taken to imply any power to make any alteration or amendment in any matter of substance of any law or part thereof."

105. Each revision of the **Insurance Law** set out the law in the form in which it was revised by each prior amendment, each revision was, by virtue of section 3, *"for all purposes, the only proper version of* [the] *law in the Islands"* and each revision included section 17.[23]

106. The submission that section 17 had no effect and had simply been re-published from time to time because no-one had brought the implied repeal to the attention of the Cabinet had little to recommend it in light of the number of times that amendments to the **Insurance Law** were considered and passed by the Legislature post-1991 [24] and was hopelessly bad in light of the 2011 amendments to the **Insurance Law** which also amended section 17.

107. Law 35 of 2011, intituled **"A Law To Amend the Motor Vehicle Insurance (Third Party Risks) Law (2007 Revision) To Facilitate the Insuring Of Electrically Powered Vehicles And Trailers; and For Incidental And Connected Purposes"** was passed on 5 December 2011 and gazetted on 22 December 2011. The laws were consolidated and published on 22 October 2012 as the **Vehicle Insurance (Third Party Risks) Law (2012 Revision).**

108. The amending law extended the definition of 'vehicle' to include electrically powered vehicles, a substantial change in the law which was reflected in the title of the law itself which ceased being a Motor Vehicle Insurance (Third Party Risks) Law and became, simply, the Vehicle Insurance (Third Party Risks) Law. Section 17 was specifically amended to reflect the extension of the provisions of the law to electric vehicles:

"3. The principal Law is amended in section 2 (1),

(a) by repealing the definition of "motor vehicle";

...

(d) by inserting, in the appropriate alphabetical sequence, the following definition-

"vehicle" means a wheeled vehicle capable of being driven or towed on a

[23] Four in all: 2004, 2006, 2007 and 2012
[24] Three in all: in 2003, 2006 and 2011

road, and includes an electrically powered vehicles, motorcycle, scooter, wheeled trailer and autowheel, but does not include a handcart, barrow or baby carriage"

"4. The principal Law is amended by deleting the word "motor vehicle" and substituting the word "vehicle" in the following provisions-

...
(m) section 17; ..."

109. The Legislature in 2011 thus not only affirmed that section 17 was very much still in force but also that it applied to the wider range of vehicles set out in section 3(e). Had McMillan J been made aware of this amendment, he plainly would not have found that section 17 had been impliedly repealed in 1991, as a repealed law cannot be amended, and the Legislature's intent by section 44(1) of the **Limitation Law,** to preserve the limitation period in section 17, would have been manifest.

110. Regrettably, Counsel did not bring these amendments to the attention of the learned Judge who stated in error that,[25]

*"The Motor Vehicles Insurance (Third Party Risks) Law of the Cayman Islands was originally enacted in 1964. It was re-enacted in 1990. The current version is the Vehicle Insurance (Third Party Risks) Law 2012 Revision) ("the Insurance Law"). **For present purposes the formal wording of the relevant provisions has remained unchanged."***

111. The decision in *Bennett v Diaz* was undoubtedly given *per incuriam.*

SUMMARY OF FINDINGS

112. None of the factors identified in the authorities support a finding that the Legislature had impliedly repealed section 17: the **Motor Vehicle Insurance Law (Third Party Risks) Law** 1990 and the **Limitation Law** 1991 were brought into force within 3 months of each other; though the statutes make different provisions for barring actions for personal injury, they can stand together and indeed have stood together from 1991; the mere fact that section

[25] At para 29

17 does not allow the exceptions and extensions to the limitation period as are allowed by section 13, where personal injury arises from other torts, is not absurd; section 17 is a specific provision and section 13 a general one so there is a strong presumption against implied repeal which in this case was not displaced; section 13 does not cover damage to property so the sections do not, in fact, cover the same ground and finally, the **Limitation Law** by section 44(1) expressly saved section 17 which prescribed a different period of limitation for actions for personal injury and damage arising from the use of a motor vehicle which was required to be insured.

113. Between 1991 and 2011, the **Insurance Law** was amended three times and the amendments were consolidated and published in 2004, 2007 and 2012.

114. Section 17 remained in force in its original form until 2011 when it was amended and extended to electric vehicles by the legislature. The 2007 **Insurance Law** and the 2011 amending law were consolidated and republished in 2012 as the **Vehicle Insurance (Third Party Risks) Law (2012 Revision).** Section 17 of that law provides the Defendant with an indefeasible defence to the claim.

ORDER

115. The Plaintiff's claim has no prospect of success and is frivolous and vexatious as being statute barred and is struck out. Judgment is entered for the Defendant. Costs follow the event, and the Plaintiff shall pay the Defendant's costs of the application and of the action, such costs to be taxed on the standard basis or agreed.

DATED THE 2ND FEBRUARY 2021

RAMSAY-HALE J