Similarly in *Liu Sing Lee v Luk Fong Chun Richard*,[229] the court gave effect to the 'plain and unambiguous words' in regulation 8(2) of the Electoral Provisions (Procedure) (Geographical Constituencies) Regulations (Cap 367O) (not adopted as the Laws of the HKSAR) and held that an elector could only subscribe one nomination paper in a particular election. The argument that an elector could subscribe another nomination paper had a previous subscription become invalid was rejected because that would amount to inserting the word 'valid' before 'nomination paper' in the regulation. Such insertion is not permissible in the absence of inadvertent blunder on the part of the legislature or law draftsman.

3.6.9 Exclusion of words

In accordance with the principle of giving effect to each and every word of a statute, no words in a statute should be treated as having no meaning unless this is the only possible conclusion that the court may come to. Needless to say, the court would not invoke its power to ignore words in statutes lightly. It would do so only in extreme case to give effect to the true legislative intent.[230] Words may be ignored 'not only where the legislation is difficult to construe but where the court is unable to rest its head on the easy pillow of uncertainty and is forced to come to the conclusion that the legislature must have meant something when it passed the Act or Ordinance in question.'[231] The court cannot however neglect words that the legislature has failed to amend.[232]

3.6.9.1 Avoiding result contrary to legislative intent

To avoid a result that is contrary to the legislative intent,[233] the court may nevertheless exclude words in a statute. *McMonagle v Westminster City Council*[234] provides a good illustration of the use of this power. The issue was whether there was a breach of s 12(4) of the Greater London Council (General Powers) Act 1986. The section required certain 'sex encounter establishments' to apply for a licence. The Act defined 'sex encounter establishments' as including 'premises at which entertainments *which are not unlawful* (emphasis added) are provided by one or more persons who are without clothes or who expose their breasts or genital… during the entertainment.' An unlicensed establishment argued that the license requirement only applied to establishment that provided only 'lawful' entertainments. In this case, there was no breach of the section because the

229 [1995] 1 HKC 499.

230 For discussion on legislative intent, see **1.3**.

231 *Leung Shee Wing v Commissioner of Inland Revenue* [1989] 2 HKC 406 at 410, per Godfrey J.

232 Ibid. Partly because of the failure of the legislature to amend s 43(2B)(c) of the Inland Revenue Ordinance (Cap 112) subsequent to the amendment of section 7, the appellant in this case was not allowed to set off property tax against the personal assessment.

233 For discussion on legislative intent, see **1.3**.

234 [1990] 1 All ER 993, [1990] 2 AC 716 (HL).

entertainment in it was unlawful as it amounted to the offence of public indecency. Rejecting this argument, the court held that:

> 'in order to avoid the substantial frustration of [the main object of the provision] it is both necessary and legitimate that the words "which are not unlawful" should be treated as surplusage as having been introduced… for no other reason than to emphasise… that a licence confers no immunity from the ordinary criminal law.'[235]

3.6.10 Changing meaning of words

For a term whose meaning has changed since the statute was enacted, there are two contradictory approaches. This 'historical' approach requires the statute to be construed as it would have been the day after the enactment. Usage and linguistic conventions at the time of commencement of the statute is therefore decisive. This is suitable for time-bound expressions and the statute which deals with a particular problem at the time when it was passed. The 'historical' approach is however not applicable if the statute has been amended or a different meaning is given by another legislation.[236]

3.6.10.1 Historical approach

In applying the 'historical' approach, the term in issue is construed in the ways in which ordinary literate people would understand it at the time the law was made.[237] If at all possible, the court would give effect to the intention of legislature. For example, the court in *HKSAR v Cheung Kam Keung*[238] gave effect to the wide definition of 'article' in s 2 of the Control of Obscene and Indecent Articles Ordinance (Cap 390)[239] and held that it covers graphic computer files.

3.6.10.2 Ambulatory approach

Another way is to treat the legislation as 'always speaking' or 'ambulatory'. The statute is applied to the circumstances as they arise and history of the enactment is not relevant.[240] It is for the court to decide in a particular case which approach should be adopted.[241] In applying the 'always speaking'

235 *McMonagle v Westminster City Council* [1990] 1 All ER 993 at 998, [1990] 2 AC 716, 726-727 (HL).

236 *Sharpe v Wakefield* (1889) 22 QBD 239, 241, [1886-90] All ER Rep 651, affirmed [1891] AC 173 (HL); *The Longford* (1889) 14 PD 34, CA (Eng).

237 *AG's Reference (No 5 of 1980)* [1980] 3 All ER 816, CA (Eng).

238 [1998] 2 HKC 156.

239 'Article' is defined as 'anything consisting of or containing material to be read or looked at or both read and looked at, any sound recording, and any film, video-tape, disc or other record of a picture or pictures.'

240 Cf section 10 of the Canadian Federal Interpretation Act.

241 In *R v Ireland, R v Burstow* [1997] 4 All ER 225, [1998] AC 147 at 158 (HL), Lord Steyn said that 'In cases where the problem arises it is a matter of interpretation whether a court must search for the historical or original meaning of a statute or whether it is free to apply the current

approach, the court takes the view that the legislative intent was for the statute to cover not only situations contemplated at the time it was made but also anything that might 'fall within the same genus of facts as those to which the expressed policy has been formulated.'[242] The legislative intent is beyond doubt if ambulatory words, such as 'produce of any description for the time being subject to Community grading rules', are used.[243] Lord Bingham pointed out the rationale of the 'ambulatory' approach:

> 'There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now.'[244]

3.6.10.2.1 Technological advancement

The 'always speaking' approach is more suitable in relation to provisions relating to scientific or technological advancement. The approach has long been recognized. In 1880, the issue for the court to decide in *A-G v Edison Telephone Co of London Ltd*[245] was, for the purposes of the Telegraph Act 1869, whether 'telegrams' extended to telephone which was invented after the coming into force of the 1869 Act. It was argued that the 1869 Act did not apply to telephone because telephone was unknown at the time the 1869 Act was passed. Rejecting the argument, the court took it as absurd if the application of the statute was 'made dependent upon the means employed for the purpose of giving the information'.[246]

The rule for construing statutes in the light of new technology is authoritatively stated by Lord Wilberforce in *Royal College of Nursing of the United Kingdom v Department of Health and Social Security*:[247]

> 'In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that

meaning of the statute to present day conditions. Statutes dealing with a particular grievance or problem may sometimes require to be historically interpreted. But the drafting technique of Lord Thring and his successors have brought about the situation that statutes will generally be found to be of the 'always speaking' variety.'.

242 *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] 1 All ER 545, [1981] AC 800, per Lord Wilberforce at 822 (HL).

243 *Department for Environment, Food and Rural Affairs v Asda Stores Ltd* [2004] UKHL 71, [2004] LLR 439 (HL).

244 *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 All ER 113, [2003] 2 AC 687, [2003] 2 WLR 692, para 9 (HL).

245 (1880) 6 QBD 244.

246 Ibid, 255.

247 [1981] 1 All ER 545, [1981] AC 800 (HL).

> Parliament's policy or intention is directed to that state of affairs. Leaving aside cases of omission by inadvertence, this being not such a case, when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the Parliamentary intention. They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made. How liberally these principles may be applied must depend upon the nature of the enactment, and the strictness or otherwise of the words in which it has been expressed. The courts should be less willing to extend expressed meanings if it is clear that the Act in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. They will be much less willing to do so where the subject matter is different in kind or dimension from that for which the legislation was passed. In any event there is one course which the courts cannot take, under the law of this country; they cannot fill gaps; they cannot by asking the question 'What would Parliament have done in this current case – not being one in contemplation – if the facts had been before it?' attempt themselves to supply the answer, if the answer is not to be found in the terms of the Act itself.'[248]

Since the issue is whether the historical or updated meaning should apply, there is no need for the court to consider whether the term in issue is ambiguous before embarking on the task of interpretation.[249]

3.6.10.2.2 The 'always speaking' approach in practice

Adopting the 'always speaking' approach, the court held that the term 'bodily harm' in the Offences against the Person Ordinance (Cap 212) covered psychiatric injuries which was unheard of at the time the Offences Against the Person Act 1861 (the UK equivalent of the relevant provisions in the Ordinance) was passed.[250] Another example is *Banker v Wilson*.[251] The issue was whether the term "bankers' books" under the Bankers' Books Evidence Act 1879 covered microfilm. Bearing the modern banking business in mind, Bridge LJ held that the term is:

> 'apt to include any form of permanent record kept by the bank of transactions relating to the bank's business, made by any of the

248 Ibid, 822. The passage was described as 'authoritatively settling the proper limits of the type of extensive interpretation now under consideration' in *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 All ER 113, [2003] 2 AC 687, [2003] 2 WLR 692, per Lord Steyn at para 24.

249 *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 All ER 113, [2003] 2 AC 687, [2003] 2 WLR 692, para 25 (HL).

250 *R v Chan Fook* [1994] 2 All ER 552, [1994] 1 WLR 689, CA (Eng); *R v Ireland, R v Burstow* [1997] 4 All ER 225, [1998] AC 147 (HL).

251 [1980] 2 All ER 81.

methods which modern technology makes available, including, in particular, microfilm.'[252]

The court took a similar view in *R (Smeaton) v Secretary of State for Health*.[253] The issue was the legality of a statutory instrument that reclassified an emergency contraceptive commonly known as the 'morning after pill'. Before the reclassification, the pill was available only on prescription from a medical practitioner. The effect of the reclassification was to permit pharmacists to dispense it without medical prescription. The claimant argued that the supply of the 'morning after pill' was in fact unlawful supply of an abortifacient without medical certification and thus amount to the offence of procuring of miscarriage under s 58 or 59 of the Offences Against the Person Act 1861. Abortifacient was substance that caused miscarriage or abortion. The contention was that the pill was not contraceptive but abortifacient because it could operate to prevent the implantation of a fertilized egg in the wall of the womb. The court held that the legislative intent of criminalizing procurement of miscarriage had to be determined by reference to current but not nineteenth century understanding as to what 'miscarriage' meant. Rejecting the claimant's argument, the court observed, *inter alia*, that both current medical and popular understandings were that 'miscarriage' plainly excluded results brought about by 'morning after pill'.

Usually, the purposive approach requires the court to treat a statute as 'always speaking'. In *R (Quintavalle) v Secretary of State for Health*,[254] the court was concerned with the meaning of 'embryo' under the Human Fertilisation and Embryology Act 1990. Section 1(1) of the 1990 Act defines the term as meaning 'a live human embryo where fertilization is complete'. At the time the 1990 Act was passed, all the known processes in which a human embryo might be produced started with a fertilized egg. Genetic manipulation was a main feature of the processes. On the other hand, an embryo created by the latest technology of cell nuclear replacement involves no genetic manipulation. The issue was whether the 1990 Act governed human embryos created by cell nuclear replacement. The court observed that the legislative intent in enacting the Human Fertilisation and Embryology Act 1990 was to provide comprehensively a 'protective regulatory system in connection with human embryos'.[255] Giving effect to that intent, it was held that the process by which an embryo was created was immaterial and the 1990 Act governed human embryo created by cell nuclear replacement as well as those by *in vitro* fertilization. Licensing of the creation of such embryos was thus prohibited.

3.6.10.3 Limitation

The limitation of the 'ambulatory' approach is that, no matter how drastic the societal situation has changed, it could not lead to an interpretation that

252 Caulfield J took it as 'a matter of common sense'.
253 [2002] EWHC 610 (Admin), [2002] 2 FLR 146.
254 [2003] UKHL 13, [2003] 2 All ER 113, [2003] 2 AC 687, [2003] 2 WLR 692 (HL).
255 Ibid, para 26.

would go beyond what might possibly be contemplated by the legislature. This is exemplified in *MacDonald v Advocate-General for Scotland*[256] in which the House of Lords held that the Sex Discrimination Act 1975 does not apply to discrimination on grounds of homosexuality.[257]

256 [2004] 1 All ER 339 (HL).
257 Ibid, paras 57-58.

CHAPTER 1

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

To consolidate and amend the law relating to the construction, application and interpretation of laws, to make general provisions with regard thereto, to define terms and expressions used in laws and public documents, to make general provision with regard to public officers, public contracts and civil and criminal proceedings and for purposes and for matters incidental thereto or connected therewith.

Originally: 31 of 1966

Operation: 31 December 1966 *L.N. 88 of 1966*

ARRANGEMENT OF SECTIONS

'gonggong zhixu' (公共秩序) and the English phrase of "public order" before and after the amendment of the Public Order Ordinance.

This subsection was applied in *Re Madam L* [2004] 4 HKC 115, when the court considered s 10D of the Mental Health Ordinance (Cap 136). The court considered the object and purposes of the ordinance before holding that the Chinese version of s 10D of Mental Health Ordinance bears a much narrower meaning than the English version.

In *HKSAR v Lau San Ching & Ors* [2003] 2 HKC 378, [2004] 1 HKLRD 683, Lugar-Mawson J held that

> "Section 10B(3) provides for a two step approach; firstly there must be an attempt to resolve the difference of meaning by applying the rules of statutory interpretation. If this fails then the interpreter has to adopt the meaning which best reconciles the texts with regard to the object and purposes of the legislation. From that it necessarily follows that if the Ordinance was initially enacted in English, the English text was the original official text from which the Chinese text was subsequently prepared and declared authentic. In ascertaining the ordinance's legal meaning, the English text should be taken as more accurately reflecting the legislature's intent at the time it was originally enacted."

In *Incorporated Owners of Tsuen Wan Garden v Prime Light Ltd* [2005] 1 HKC 438, the court decided that the phrase "majority" in the Third Schedule of Building Management Ordinance (Cap 344) should mean more than 50%.

In *Commissioner of Rating & Valuation v Chan Ho Chin* (unreported, LDMR 48/2000, 26 June 2001), the Lands Tribunal raised the point that there is conflict between the Chinese and English versions of s 53A(5)(b) Landlord and Tenant (Consolidation) Ordinance (Cap 7). "Instead of 'in any case', the literal translation of the Chinese expression '(如屬其他情況)' should be 'in any other case'". The court adopted the same approach in *Chan Fung Lan v Lai Wai Chuen* [1997] 1 HKC 1, ie, when the court is of the view that the Chinese text contains inaccuracies it will give effect to the text of the original legislation.

This subsection was applied in *Chan Sau Mui & Anor v To Cheong Lam* 2006] HKCU 1099, when there was a difference between Chinese text and English text of the phrase "enforce" under reg 9(6A) of the Legal Aid Regulations (Cap 91A).

This subsection was applied in *S-J v Oriental Press Group Ltd & Ors* [1998] 2 HKC 627. The question was, in relation to Art 16(3)(b) of the Hong Kong Bill of Rights Ordinance, whether the Chinese text of (公共秩序) include the meaning of 'public order' or 'public order (ordre public)'? The court held at para 82 that "the presumption that the characters (公共秩序) in the Chinese language text should be construed to give effect to the words 'ordre public' in the English language text has not been rebutted."

10C. Expressions of common law

Remarks:
Amendments retroactively made - see 26 of 1998 s. 9

(1) Where an expression of the common law is used in the English language text of an Ordinance and an analogous expression is used in the Chinese language text thereof, the Ordinance shall be construed in accordance with the common law meaning of that expression. *(Amended L.N. 336 of 1990)*

(2) *(Repealed 26 of 1998 s. 9)*

[IGC10C.01] Enactment history

Subsection (1) was amended by the Revised Edition of the Laws (Correction of Errors) (No 4) Order (LN 336 of 1990) came into operation in 25 October 1990.

Subsection (2) was repealed by s 9 of the Adaptation of Laws (Interpretive Provisions) Ordinance (26 of 1998) which received Assent on 16 April 1998 and was deemed to have come into operation on 1 July 1997.

[IGC10C.02] General note

This section specifies that when a common law expression is used, that expressions shall be construed in accordance with the common law meaning.

[IGC10C.03] Cases

In *A-G v Shimizu Corp (formerly known as Shimizu Construction Co Ltd) (No 2)* [1997] 1 HKC 453, in applying this section, the arbitrator considered whether the meaning of "interest" in ss 22 and 22A (now repealed) of the Arbitration Ordinance (Cap 341) meant simple or compound interest, and the legislative intention by reference to other jurisdictions. The Court of Appeal held that the arbitrator was entitled by s 10C to consider the meaning of common law expressions, but the interpretation of the relevant section of Arbitration Ordinance should best be found within the section itself.

10D. Name of statutory body corporate

Where an Ordinance establishes a body corporate and in the English language text and Chinese language text of that Ordinance the name of the body corporate is in the form only of the language of that text, the name of the body corporate shall consist of the form of its name in each of the texts of the Ordinance.

(Amended L.N. 336 of 1990)

[IGC10D.01] Enactment history

The section was amended by the Revised Edition of the Laws (Correction of Errors) (No 4) Order (LN 336 of 1990) came into operation in 25 October 1990.

10E. Words etc. in the official languages may be declared as equivalents

Remarks:
Amendments retroactively made - see 26 of 1998 s. 37

(1) The Chief Executive in Council may, by notice in the Gazette, declare that any word, expression, office, title (including the short title of any Ordinance), citation or thing therein specified in one official language shall, in relation to the interpretation of an Ordinance, be the equivalent of any word, expression, office, title, citation or thing therein specified in the other official language.

(2) No declaration shall be made under this section unless a draft of the notice has been laid before and approved by resolution of the Legislative Council, and section 34 of this Ordinance shall not apply in relation to any such declaration.

(Amended 26 of 1998 s. 37)

(Part IIA added 18 of 1987 s. 4)

[IGC10E.01] Enactment history

This section was amended by s 37 of the Adaptation of Laws (Interpretive Provisions) Ordinance (26 of 1998) which received Assent on 16 April 1998 and was deemed to have come into operation on 1 July 1997.

Part IIA was added by s 4 by the Interpretation and General Clauses (Amendment) Ordinance (18 of 1987) and received Assent on 26 March 1987 and came into operation on 23 December 1988. (Ordinance not disallowed, see GN 2078 of 1987.)

PART III

GENERAL PROVISIONS AS TO ORDINANCES

11. Ordinance to be public Ordinance

Every Ordinance shall be a public Ordinance and shall be judicially noticed as such.

[IGC11.01] Enactment history

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

12. (Repealed 89 of 1993 s. 5)

[IGC12.01] Enactment history

This section was repealed by s 5 of the Interpretation and General Clauses (Amendment) (No 2) Ordinance (89 of 1993) which received Assent on 16 December 1993 and came into operation on 17 December 1993.

13. Citation of Ordinance

(1) Where any Ordinance is referred to, it shall be sufficient for all purposes to cite such Ordinance by-

(a) the title, short title or citation thereof;

(b) its number among the Ordinances of the year in which it was enacted; or

(c) any chapter number lawfully given to it under the authority of any Ordinance providing for the issue of a revised or other edition of the laws of Hong Kong. *(Amended L.N. 54 of 1989)*

(2) Any reference made to any Ordinance, in accordance with the provisions of subsection (1), may be made according to the title, short title, citation, number or chapter number used in copies of Ordinances printed by the Government Printer.

(Amended L.N. 57 of 1974)

[IGC13.01] Enactment history

Subsection (1)(c) was amended by the Revised Edition of the Laws (Correction of Errors) Order (LN 54 of 1989) came into operation 24 February 1989.

The section was amended by Revised Edition of the Laws (Correction of Errors) Order (LN 57 of 1974).

14. (Repealed 89 of 1993 s. 6)

[IGC14.01] Enactment history

This section was repealed by s 6 of the Interpretation and General Clauses (Amendment) (No 2) Ordinance 1993 (89 of 1993) which received Assent on 16 December 1993 and came into operation on 17 December 1993.

15. Reference to Ordinance as amended

(1) Where in any Ordinance a reference is made to another Ordinance, such reference shall be deemed to include a reference to such last mentioned Ordinance as the same may from time to time be amended.

(2) Where any Ordinance repeals and re-enacts, with or without modification, any provision of a former Ordinance, references in any other Ordinance to the provision so repealed shall be construed as references to the provision so re-enacted.

[IGC15.01] Enactment history

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

[IGC15.02] UK and Australian statutes

See s 17 of UK Interpretation Act 1978 and s 10 of Acts Interpretation Act of the Commonwealth of Australia.

16. Citation of part of Ordinance

In any Ordinance a description or citation of a portion of an Ordinance shall be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

[IGC16.01] Enactment history

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

17. Construction of reference to Ordinance, section, etc.

(1) Any reference in any Ordinance to "any Ordinance" or to "any enactment" shall be construed as a reference to any Ordinance for the time being in force.

(2) Where in an Ordinance there is a reference to a section or other division by number, letter or combination of number and letter, and not in conjunction with the title or short title of any other Ordinance, the reference shall be construed as a reference to the section or other division of that number, letter or combination in the Ordinance in which the reference occurs. *(Replaced 89 of 1993 s. 7)*

(3) Where in a section of an Ordinance there is a reference to a subsection or other division by number, letter or combination of number and letter, and not in conjunction with the number of a section of that or any other Ordinance, the reference shall be construed as a reference to the subsection or other division of that number, letter or combination in the section in which the reference occurs. *(Replaced 89 of 1993 s. 7)*

(4)-(5) *(Repealed 89 of 1993 s. 7)*

[IGC17.01] Enactment history

Subsections (2) and (3) were replaced and subss (4) and (5) were repealed by s 7 of the Interpretation and General Clauses (Amendment) (No 2) Ordinance 1993 (89 of 1993) which received Assent on 16 December 1993 and came into operation on 17 December 1993.

18. Marginal notes and section headings

Remarks:
Amendments retroactively made - see 26 of 1998 s. 10

(1) Where any section, subsection or paragraph of any Ordinance is taken verbatim from, or is substantially similar to, a section, subsection, paragraph or other provision of any law of a place outside Hong Kong or any treaty, there may be added as a note to the section, subsection or paragraph of the Ordinance a reference, in abbreviated form, to such section, subsection, paragraph or provision of that law or treaty. *(Amended 26 of 1998 s. 10)*

(2) A reference added under subsection (1) shall not have any legislative effect and shall not in any way vary, limit or extend the interpretation of any Ordinance.

(3) A marginal note or section heading to any provision of any Ordinance shall not have any legislative effect and shall not in any way vary, limit or extend the interpretation of any Ordinance.

(Amended 44 of 1988 s. 2)