

THE EFFECT OF SECTION 9A OF THE INTERPRETATION ACT ON STATUTORY INTERPRETATION IN SINGAPORE

In 1993, Parliament enacted Section 9A to legislatively mandate a purposive interpretation of written law. Section 9A also explicitly permits the use of extrinsic materials, *eg*, explanatory statements, ministerial speeches, Parliamentary debates, *etc*, in interpreting written law. Seven years after the passage of 9A, this article considers its effect on judicial decisions in Singapore.

I. INTRODUCTION

THE 1993 enactment of section 9A of the Interpretation Act¹ is an important milestone in Singapore's legal history.² Before the passage of section 9A, statutory interpretation operated under rather ambiguous parameters.³ Without doubt, the ability and willingness of Singapore courts to look at legislative purpose predates the enactment of section 9A. For example, in 1992, the High Court reviewed the various common law approaches to statutory interpretation, (*eg*, the literal rule, the mischief rule, the golden rule, and the purposive approach), and settled on a purposive approach over a literal interpretation of the applicable statute.⁴ But the criterion for the legitimate consideration of legislative purpose has not always been perfectly clear,

¹ Interpretation Act (Cap 1) s 9A. The Act came into effect on 16 April 1993. For an excellent overview of the relationship between statutes and the common law, see G Calabresi, *A Common Law for the Age of Statutes* (1982).

² The potential significance of s 9A was heralded in an article published immediately after its enactment. R Beckman & A Phang, "Beyond *Pepper v Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (1994) 15 Statute LR 69. If that article attempted, *inter alia*, to predict the likely future effect of s 9A, the present comment represents a follow-up, discussing s 9A's effect seven years after its passage. Section 9A is contemporaneous with two other landmark provisions of comprehensive operation: the 1993 Application of English Law Act and the 1994 Practice Statement (Judicial Precedent) of the Court of Appeal, both of which I hope to also do follow-up research on for publication this year.

³ *Ibid*, at 74-77 discuss these ambiguities in some detail.

⁴ *Low Gim Siah v Law Society of Singapore* [1992] 1 SLR 166.

eg, whether ambiguity or inconsistency was needed before legislative purpose was introduced.⁵

Following the 1993 decisions of *Public Prosecutor v Lee Ngin Kiat*⁶ and *Tan Boon Yong v Comptroller of Income Tax*,⁷ both of which adopted the English rule in *Pepper v Hart*,⁸ extrinsic materials were certainly allowed in – even before the passage of section 9A.⁹ But before 1993, the position was indefinite. Explicit reference to parliamentary debates was generally prohibited.¹⁰ Nonetheless, explanatory statements¹¹ and the speeches of ministers at Second Reading¹² had sometimes been allowed in without much discussion of the permissibility of reference to extrinsic materials. Other cases indirectly chose not to refer to extrinsic materials. For example, in *Ventura Navigation Inc v Port of Singapore Authority & Ors*, counsel for the plaintiffs “objected to any reference being made to the explanatory statement to construe the meaning of an expression in the relevant statute on the ground that it is not permitted by the law”¹³ and the court avoided the issue by an interpretation that did not rely on the explanatory statement.

II. SECTION 9A(1)

9A. — (1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in

⁵ See, eg, *Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground v Collector of Land Revenue (Housing and Development Board)* [1992] 1 SLR 425 (“The fundamental rule of interpretation of a statute is to ascertain the intention of Parliament. If the words of the statute are in themselves precise and unambiguous the court must give effect to them according to their natural and ordinary meaning, as the words themselves best declare the intention of Parliament. If, however, adhering to their grammatical and ordinary meaning would lead to some absurdity, or some repugnancy or inconsistency with the other parts of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further.”)

⁶ [1993] 2 SLR 181.

⁷ [1993] 2 SLR 48.

⁸ [1993] AC 593.

⁹ But as s 9A is more expansive than *Pepper v Hart* with respect to extrinsic materials, the enactment was more than a restatement of the common law.

¹⁰ See *In Re Application by Laycock and Ong* [1954] MLJ 41. See also Beckman & Phang, *supra*, note 2, at 75.

¹¹ See, eg, *Re Estate of Liu Sinn Min, Deceased* [1974] 2 MLJ 9; *Moses v Moses* [1968] 1 MLJ 96; *Rex v Soh Eng Chian* [1937] MLJ 247; and *In the Matter of Three Orders of the Governor in Council: Alkaff and Co v Sir Shenton Thomas I* [1936] SSLR 219.

¹² *J Annathurai v Attorney-General* [1987] 2 MLJ 585.

¹³ [1989] SLR 626.

the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.¹⁴

Section 9A(1) requires an interpretation of written law that promotes the purpose or object underlying the law. The provision – for the first time – *mandates* that an interpretation promoting legislative purpose be preferred over one that does not promote such purpose or object.

In one of the first cases to cite section 9A – *Chen Hsin Hsiong v Guardian Royal Exchange Assurance plc*¹⁵ – a restrictive approach was taken towards statutory language already the subject of judicial decisions. In *Chen Hsin Hsiong*, the High Court reversed a District Court decision that had used section 9A to re-interpret section 18(b) of the Workmen's Compensation Act.¹⁶ The new analysis of section 9A by the District Court allowed it to avoid otherwise binding case law¹⁷ interpreting section 18(b) contrarily. In rejecting the District Court's use of section 9A, the High Court ruled:

[The District Court judge], however, went on to hold that he was justified in looking at section 18(b) afresh, free from the authority of [binding precedent] because of the enactment of section 9A(1) of the Interpretation Act in April 1993. This section provides that, in the interpretation of any provision of a written law, an interpretation that would promote the purpose or object underlying that law shall be preferred to an interpretation that would not promote that purpose or object. With respect, I do not think that the learned district judge was justified in using section 9A(1) to depart from what he would otherwise have regarded as binding authority. Section 9A(1) was enacted to assist in the interpretation of statutes, it was not enacted to change the law as it existed at the date that provision was passed.¹⁸

¹⁴ Interpretation Act 9A (Cap 1). Section 9A is divided up in this comment so that relevant excerpts immediately precede the pertinent discussion.

¹⁵ [1994] 2 SLR 92.

¹⁶ Cap 354, 1985 (Rev Ed).

¹⁷ *Cory & Son v France, Fenwick & Co* [1911] 1 KB 114; *Lian Hup Timber v Lee Thiam Ho* (DCA 48 of 1988) (unreported).

¹⁸ [1994] 2 SLR 92 at 98. The last sentence of this excerpt can be read in different ways, not all of which are legitimate. For example, *Chen Hsin Hsiong* was (presumably) *not* holding that s 9A failed to operate retroactively, because it clearly has retroactive application, as a declaratory statute. *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR 690 ("Although s 9A of the Interpretation Act only came into effect after the commencement of these proceedings in the High Court, we feel justified in having recourse to it as it is a declaratory enactment which thus has retrospective effect as an exception to the general rule against retrospective legislation.") See also *Raffles City Pte Ltd v Attorney General*

Chen Hsin Hsiong seemingly faced a dilemma in applying section 9A. While section 9A surely requires reference to legislative purpose in interpreting a statute – and while the very meaning, and thus the effect, of a statute, may be changed if legislative purpose is referred to – caution is appropriate when re-interpreting written law already subject to settled interpretation. That is, consider an alternative situation: if section 18(b) had been substantially *amended* – after years of settled interpretation by higher courts, for example – then subsequent (*ie*, post-amendment) interpretations by lower courts would not be strictly bound by the previously settled interpretations, of course, because of the fundamental primacy of legislation over common law. But the risk (and scope) of section 9A is that it may be seen to *potentially* “amend” *all existing* legislation, as a practical matter. The High Court in *Chen Hsin Hsiong* was apparently concerned about this danger to the stability of existing law, and chose to limit the scope of section 9A accordingly.

Indirect support for the High Court’s view in *Chen Hsin Hsiong* can be found in two other places. First, the Court of Appeal’s decision in *Public Prosecutor v Manogaran s/o R Ramu*¹⁹ may have implicitly supported *Chen Hsin Hsiong*. *Manogaran* held that, to protect the presumed reliance of the public on existing law, an interpretation of a statute that overrules existing case law shall not apply retroactively.²⁰ Second, the apparent policy aims behind section 9A(4)(a) suggest that settled, or ordinary, interpretations of

[1993] 3 SLR 580 (“The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are *prima facie* prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature.... Section 9A is clearly not a provision relating to procedure or evidence. However, in my opinion, it is a declaratory enactment.”) Nor should the term “law” in the last sentence of this excerpt mean anything other than “case law that interprets statutory law,” rather than the statutory law itself, because to the extent that a new interpretative approach (*ie*, s 9A) produces different judicial outcomes, the second half of the sentence would be a *non-sequitor* to the first half. On the other hand, the last sentence could be making a jurisprudential assumption about the “declaratory” nature of judicial decision-making. But see *Public Prosecutor v Manogaran s/o R Ramu* [1997] 1 SLR 22 (“In our opinion, the better view is to acknowledge the fiction of the declaratory theory. Indeed, in modern times, Blackstonian theory has had to make way for the concession that judges do in fact make law”).

¹⁹ [1997] 1 SLR 22.

²⁰ It should be noted that *Manogaran* is not directly in support of *Chen Hsin Hsiong*: (1) the former involved criminal law, with its greater – and Constitutionally protected – concerns for retroactive application; (2) 9A was already in effect at the time of the earlier precedent in *Manogaran*; and (3) as opposed to *Chen Hsin Hsiong*, the new interpretation in *Manogaran* was not by a court lower in the judicial hierarchy, *ie*, it was a Court of Appeal decision to overrule its own previous decision.

statutory language promote stability and the reasonable expectations of parties relying on the law.²¹

In any event, despite the initially restrictive analysis in *Chen Hsin Hsiong*, subsequent cases show that the interpretation of written law in Singapore has clearly been affected by 9A(1), and that an investigation of legislative purpose is a routine and necessary part of deriving the meaning of statutory language. Some of the strongest support for a broad reading of section 9A(1) is found in *Constitutional Reference No 1 of 1995*,²² decided by the Constitution of the Republic of Singapore Tribunal (Yong Pung How CJ, Karthigesu JA, and LP Thean JA):

In adopting a purposive interpretation of the Constitution in accordance with section 9A of the Interpretation Act (Cap 1), the court would be entitled to look at all legislative materials to ascertain the meaning of any provision of a written law, whether or not that provision was ambiguous. It would allow the court to modify or reject the literal meaning of any provision to give effect to such purpose or object, *and to change the legislative words* to achieve that purpose or object, once the intention of Parliament was ascertained.²³

The Tribunal's attitude towards legislative purpose is clearly quite favourable, permitting a court to, effectively, re-write legislation so that the legislative purpose is achieved under section 9A.

III. SECTION 9A(2)

9A. — (2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material –

- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or

²¹ I should emphasise that this is my own interpretation, – s 9A(4)(a) was not discussed in *Chen Hsin Hsiong*.

²² [1995] 2 SLR 201.

²³ *Ibid.* (Emphasis added). See also *Public Prosecutor v Keh See Hua* [1994] 2 SLR 277; *Diaz Priscillia v Diaz Angela* [1998] 1 SLR 361.

- (b) to ascertain the meaning of the provision when –
 - (i) the provision is ambiguous or obscure; or
 - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

While section 9A(1) *requires* a preference for a purposive interpretation, section 9A(2) is a *permissive* provision, allowing reference to extrinsic materials under certain (very broadly stated) conditions. Curiously, an early case referring to section 9A, *Re How William Glen*, rejected the use of extrinsic materials on the following grounds:

Where the words of the statute are plain and free from ambiguity the courts cannot call in aid the various extrinsic material enumerated in that section. Further, the rule of purposive approach in interpreting a statute comes in only where the words of the statute are ambiguous.²⁴

However – although section 9A(2)(b)(i) does provide for the use of extrinsic materials when a provision is “ambiguous or obscure” – section 9A(2)(a) also clearly permits the use of extrinsic materials “to confirm that the meaning of the provision is the ordinary meaning”. Just last year, this early interpretation of 9A(2) in *Re How William Glen* was explicitly overruled in the Court of Appeals decision of *Planmarine AG v Maritime and Port Authority*.²⁵ It is now clear that ambiguity or obscurity is not needed as a prerequisite for either the introduction of extrinsic materials, nor for an investigation of legislative purpose.²⁶

²⁴ [1994] 3 SLR 474 (“[T]he first rule for the understanding of the words of a statute is the plain meaning of the rule. It is only where the draftsman has failed to use plain words that aids to interpretation are to be employed”)

²⁵ [1999] 2 SLR 1 (“Furthermore, s 9A(2)(a) of the Interpretation Act expressly allows the court to take into consideration materials such as parliamentary debates to confirm that the meaning of the provision is the ordinary meaning conveyed by the text taking into account the purpose underlying the written law. Following the clear wording of s 9A of the Interpretation Act, there is no blanket rule that a provision must be ambiguous or inconsistent before a purposive approach to statutory interpretation can be taken”).

²⁶ See also *Public Prosecutor v Keh See Hua* [1994] 2 SLR 277; *Diaz Priscillia v Diaz Angela* [1998] 1 SLR 361.

IV. SECTION 9A(3)

9A – (3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include –

- (a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;
- (b) any explanatory statement relating to the Bill containing the provision;
- (c) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;
- (d) any relevant material in any official record of debates in Parliament;
- (e) any treaty or other international agreement that is referred to in the written law; and
- (f) any document that is declared by the written law to be a relevant document for the purposes of this section.

Section 9A(3) specifies several types of extrinsic material that can be relied upon in interpreting a statute. As explicitly permitted under section 9A(3), explanatory statements have been cited extensively to assist in statutory interpretation.²⁷ Since the enactment of section 9A, Parliamentary debates and ministerial speeches, as allowed under sections (b) and (c), have also

²⁷ See, eg, *Shell Eastern Petroleum Pte Ltd v Chief Assessor* [1999] 1 SLR 441; *Taw Cheng Kong v Public Prosecutor* [1998] 1 SLR 943; *MCST Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR 366; *Lee Han Tiong & Ors v Tay Yok Swee* [1997] 1 SLR 289; *Public Prosecutor v Sng Siew Ngoh* [1996] 1 SLR 143; *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201; *Re Shares in Turriss SEA Pte Ltd* [1995] 3 SLR 765; *GE Pacific Pte Ltd v Comptroller of Income Tax* [1994] 1 SLR 307.

²⁸ See, eg, *Public Prosecutor v Intra Group (Holdings) Co Inc* [1999] 1 SLR 803; *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1; *William Cheng v Chai Mei Leng (mw)* [1999] 2 SLR 487; *Lim Keng Chia v Public Prosecutor* [1998] 1 SLR 686; *Taw Cheng Kong v Public Prosecutor* [1998] 1 SLR 943; *Public Prosecutor v Ramlee and another action* [1998] 3 SLR 539; *Public Prosecutor v Lee Soon Lee Vincent* [1998] 3 SLR 552; *Coop International Pte Ltd v Ebel SA* [1998] 3 SLR 670; *Public Prosecutor v Mohammad Rohaizad bin Rosni* [1998] 3 SLR 804; *Public Prosecutor v Manogaran s/o*

been cited in a very high number of statutory interpretation cases.²⁸

The items specifically included in section 9A(3) are not exhaustive, and other kinds of extrinsic materials have been allowed. For example, although section 9A(3) does not specifically allow reference to Select Committee Reports,²⁹ such reports have nonetheless been permitted several times as interpretative tools, apparently under the non-restrictive language beginning subsection (3), “without limiting the generality of subsection (2)”.³⁰ Academic commentaries have also been permitted under section 9A: in *ACS Computer Pte Ltd v Rubina Watch Co (Pte) Ltd & Anor*, the High Court cited section 9A(3) as authority for its reliance on technical commentaries by an expert on the Torrens system of land titles registration.³¹

V. SECTION 9A(4)

9A – (4) In determining whether consideration should be given to any

R Ramu [1997] 1 SLR 22; *Public Prosecutor v Lim Niah Liang* [1997] 1 SLR 534; *Creative Technology Ltd v Aztech Systems Pte Ltd* [1997] 1 SLR 621; *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726; *Public Prosecutor v Yong Heng Yew* [1996] 3 SLR 566; *Lim Lye Hock v Public Prosecutor* [1995] 1 SLR 238; *Re Haji Meera Hussain's Will's Trust* [1995] 1 SLR 559; *Public Prosecutor v Teo Ai Nee & Anor* [1995] 2 SLR 69.

²⁹ Beckman & Phang stated that s 9A's failure to include Select Committee Reports was a “glaring omission... [which] is unfortunate because in Singapore it is usually the most important and controversial Bills which are referred to a Select Committee,” *supra*, note 2, at 87-8. However, as they later discuss, the general language of s (2) might be used to allow in such reports – a prediction which has proven accurate.

³⁰ For cases relying on Select Committee Reports, see *MCST Plan No 549 v Chew Eu Hock Construction Co Pte Ltd and another action* [1998] 1 SLR 1027; *Bee See & Tay v Ong Hun Seang & Ors (trustees of Zion Gospel Mission Ltd) & another appeal Suit No 1241 of 1992* [1997] 2 SLR 193; *RSP Architects Planners & Engineers v Ocean Front Pte Ltd and another appeal* [1996] 1 SLR 113; *Aztech Systems Pte Ltd v Creative Technology Ltd* [1996] 1 SLR 683; *Balwant Singh v Double L & T Pte Ltd* [1996] 2 SLR 726; *Re Ng Lai Wat; Official Assignee v Housing and Development Board* [1996] 3 SLR 106; *Chuan Hoe Engineering Pte Ltd v Public Prosecutor* [1996] 3 SLR 544; *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201; *Abdul Rahman bin Mohamed Yunoos & Anor (trustees of the estate of M Haji Meera Hussain, deceased) v Majlis Ugama Islam Singapura* [1995] 2 SLR 705; *Public Prosecutor v Teoh Ai Nee & Anor* [1994] 1 SLR 452.

³¹ [1998] 1 SLR 72 (“The subject matter of Mr Baalman's commentary is a highly technical one, and Parliament relied on Mr Baalman's work as the bill on which it acted. Mr Baalman's commentary in the circumstances may be regarded as having a similar status to the materials listed in s 9A; it also no doubt merits the general description of material capable of assisting in the ascertainment of the meaning of a provision of the Act for the purposes set out in the section”). But see *United Overseas Finance Ltd v Mutu Jeras* [1989] SLR 486 (even before the enactment of s 9A, allowing reference to Baalman's commentary as evidence of legislative purpose).

material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to –

- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and
- (b) the need to avoid prolonging legal or other proceedings without compensating advantage.

Section 9A(4) is a counterweight to the general thrust of section 9A, because it requires a court to consider if reference to extrinsic material is unjust³² or inefficient.³³ This subsection has only been cited a few times by Singapore courts,³⁴ and it has rarely been used to justify ignoring the language of extrinsic materials.³⁵ Of course, it is possible that the courts sometime implicitly weigh the elements of section 9A(4) in making determinations about the use of extrinsic materials in the interpretation of written law, but choose not to mention it in their decisions, though this seems unlikely.³⁶ More probable is that with the relative ease and speed with which legislative history can be researched in Singapore, section 9A(4) has not been particularly relevant.

VI. CONCLUSION

Since the 1993 passage of section 9A, extrinsic materials have been relied on extensively by the courts to interpret the meaning and effect of written

³² 9A(4)(a) is concerned with the ability of people to rely on the ordinary meaning of a provision, and thus involves the issue of fair notice of the law. That is, as people are presumed to have knowledge of the written law, but generally not to have knowledge of the extrinsic materials that may affect the interpretation of such laws, it could be unjust to use such extrinsic material to force a different interpretation on a statute than the plain meaning suggests.

³³ Efficiency concerns are addressed in subsection (4)(b).

³⁴ *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201; *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1.

³⁵ See, eg, *Tan Un Tian v Public Prosecutor* [1994] 3 SLR 33, citing the public policy reasons inherent in s 9A(4) (“one must also bear in mind the policy considerations so clearly stated in s 9A(4) namely, the desirability of the public being able to rely on the ordinary meaning conveyed by the statutory provision and the need to avoid prolonged and wasteful litigation.”)

³⁶ That is, it is one thing for courts to refer (as they commonly do) to extrinsic material without mentioning the authority of s 9A, but another thing entirely for them to reject extrinsic material on justice or efficiency grounds under s 9A(4) without discussing the rationale of their balancing act.

law, as delineated in section 9A(2) – (4). In addition, courts appear much more willing to explicitly look to legislative purpose generally in the interpretation of written law, as 9A(1) mandates. As for section 9A(4), there seems to be minimal explicit concern about whether the advantages of using extrinsic materials might be outweighed by disadvantages of cost, time, or fair notice of law. Interestingly, the majority of the cases that are, or might presumably be, relying on section 9A do not actually cite or refer to the provision. In some cases, this may be simply because 9A was not strictly necessary to the decision (*eg*, even before 9A was passed, judges felt relatively free to investigate legislative purpose anyway). However, in the large majority of cases in which extrinsic materials are relied on, but without citing section 9A as authority, it is assumed that the use of extrinsic materials is now such an undisputed element of legislative interpretation as for it to be considered unnecessary to cite the authority of section 9A itself.

A survey of practising lawyers might shed some light on the extent of any extra financial burden imposed since 1993 by the enactment of section 9A. Since the passage of section 9A, and as predicted by Beckman & Phang,³⁷ the computerisation of Singaporean legal data through “LAWNET” makes it comparatively efficient and inexpensive to find extrinsic materials. Parliamentary debates, international treaties, explanatory statements, *etc*, currently dating back to 1977, are all available at the click of a computer mouse from a lawyer’s office desk. Indeed, to the extent that certainty of law is increased by the extra interpretative resources available under section 9A, and to the extent that certainty of law reduces litigation and related costs, section 9A may arguably have caused a net reduction in legal costs, though this is obviously a speculative suggestion.³⁸

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³⁷ *Supra*, note 2, at 94.

³⁸ Ultimately, the practical significance of s 9A on legal results is difficult to evaluate. On the one hand, since it pertains to the entire corpus of written law in Singapore, and imposes (or allows) additional interpretative requirements on all such laws, s 9A might be seen as enormously important and far-reaching. On the other hand, as a practical matter, due to the subtleties of legal reasoning, the semantic vagaries of human language, and the ultimately impenetrable nature of the judicial decision-making process itself, it is impossible to tell with absolute certainty the actual effect s 9A has had on the outcome of any particular case. Of course, this uncertainty of effect is not limited to s 9A, but applies across the entire body of law.

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