IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

Cause No.: G 215 of 2015
LACV 90 of 2015

BETWEEN	**CAROL ANGELLA BENNETT**	**Plaintiff**
AND	**HENRY MICHAEL DIAZ**	**Defendant**

IN CHAMBERS

Appearances: Mr. Neil Timms QC instructed by Ms. Rosie Whittaker-Myles of RWM Chambers for the Plaintiff
Mr. Michael Wingrave of Dentons for the Defendant

Before: **The Hon. Justice Robin McMillan**
Heard: **18 November 2019 and 10 December 2019**

Draft Judgment Circulated: **22 January 2020**

Judgment Delivered: 28 January 2020

HEADNOTE

Implied Repeal – Repugnance – Manifest Reformatory Purpose of Limitation Law – Application of the Rule in Pepperv v Hart – Avoidance of Illogicality and Injustice.

JUDGMENT

1. This matter arises for consideration pursuant to an Originating Summons dated 27 November 2015 and more particularly for present purposes pursuant to a Summons Application dated 25 July 2017.

2. By Originating Summons, Carol Angella Bennett ("the Plaintiff"), had sought a direction under section 39 of the Limitation Law (1996 Revision) that the provisions of that Law shall not apply to the Plaintiff's action against Henry Michael Diaz ("the Defendant").

3. The Plaintiff's Summons Application goes further by explicitly seeking as a preliminary finding of the Court that "*there be a determination of the issue of implied repeal*", meaning deciding whether the Plaintiff's action could be statute-barred pursuant to section 17 of the Motor Vehicles Insurance (Third Party Risks) Law (2007 Revision), or alternatively pursuant to that section and/or pursuant to section 13 of the Limitation Law (1996 Revision). The alternative case was not advanced at the hearing for the reason set out at paragraph 4 below.

4. It has been agreed by the parties that the sole question for hearing and resolution at this stage is whether or not the Limitation Law 1991 impliedly repealed section 17 of the Motor Vehicles Insurance (Third Party Risks) Law originally enacted in 1990. This is explained more fully below.

5. Although this central issue is approached by counsel in a number of different ways it remains the fundamental question for the Court to decide.

Background

6. In view of the narrowness of the issue for determination, the Court invited the parties to provide for the assistance of the Court a summary of background and agreed facts. The summary will now follow.

7. The Plaintiff was injured in a traffic accident which occurred on 24 February 2012. She was the driver of a Toyota Corolla motor vehicle, Registration Number Q3213, along Dorcy Drive when she was rear-ended by a Chevy Silverado truck, Registration Number

137770 owned and driven by the Defendant. The claim in these proceedings arises from this accident.

8. The Police Incident Report issued by the Crime Desk of the Royal Cayman Islands Police Service on 19 February 2013, indicates that the Defendant accepted fault for the accident.

9. At the time of the accident, the Plaintiff, a Jamaican national, was a work permit holder residing in the Cayman Islands. Upon the expiry of her term limit in November 2013, the Plaintiff returned to Jamaica. She alleges serious injuries.

10. An Indorsed Writ was issued on 27 November 2015 in these proceedings following a letter of intent to commence proceedings dated 15 July 2015, i.e. more than three years after the accident. The Plaintiff's Affidavit, referred to below, describes impecuniosity, a litany of failures of her previous attorneys that resulted in the limitation period of 3 years expiring and delays then necessarily occasioned in her obtaining legal aid.

11. An Originating Summons with an initial return date of 29 January 2016 was issued on 27 November 2015. It invoked the Court's discretion to extend the 3-year limitation period pursuant to section 39 of the Limitation Law (1996 Revision). The Plaintiff's Affidavit in support of the Originating Summons was filed 27 November 2015.

12. Orders for Directions were made on 29 January 2016, and on 17 August 2016. By Order dated 17 August 2016, McMillan J gave directions *inter alia* for the filing and service of Statement of Claim, Defence and any Affidavit evidence in response to the Originating Summons and for further directions.

13. The Statement of Claim with an Interim Schedule of Damages was filed on 28 September 2016.

14. The Defence was filed on 5 October 2016. The Defendant admitted liability but pleaded the expiry of the limitation period set out in section 17 of the Motor Vehicles Insurance (Third Party Risks) Law (2007 or alternatively 2012 Revisions). He denied the applicability of sections 13 and 39 of the Limitation Law by reason of section 17.

15. Following the issue of a Summons filed by the Plaintiff's attorney on 25 July 2017, (the "25 July 2017 Summons") and discussions between counsel, agreement was reached that the sole question for hearing at this stage and addressed in submissions is whether or not the Limitation Law 1991 impliedly repealed section 17 of the Motor Vehicles Insurance (Third Party Risks) Law originally enacted in 1990. Implied repeal would then enable the Court to consider its jurisdiction to exercise a power under section 39 of the Limitation Law (to disapply the provisions of its section 13 and to grant leave to proceed with the Plaintiff's claim for damages pursuant to her Writ and Statement of Claim) – see paragraph 1(a) of the 25 July 2017 Summons. The Court emphasizes the importance of this agreement.

16. The Summons was listed for hearing on 25 October 2017.

17. The Plaintiff's Counsel wished to invite the Court to consider certain Hansard records in evidence.

18. The Plaintiff's attorneys, having identified the Legislative Assembly (Immunities, Powers and Privileges) Law (2015 Revision) as relevant, particularly section 11 which required the Speaker's permission before any evidence could be adduced in court relating to, inter alia, debates or proceedings in the Legislative Assemble, sought permission to do so. By letter dated 29 August 2017, through the Clerk of the Legislative Assembly, the Speaker's permission to cite identified Hansard transcripts in these proceedings was requested. This provision had been overlooked in all previous cases in which so-described *Pepper v Hart* issues arose.

19. On 5 October 2017, the Clerk of the Legislative Assembly responded that the Speaker was unable to grant permission and that historically Hansard "*had not been allowed for use in the Grand Court.*" The Plaintiff's attorneys responded the following day pointing to various authorities in which Hansard had been admitted and drew the Speaker's attention to *Pepper v Hart* inviting him to reconsider.

20. By letter dated 16 October 2017, the Clerk of the Legislative Assembly conveyed the formal refusal of permission. The rationale for refusal was on the basis of legislative

privileges and immunities and that "*the Honourable Speaker is not prepared to subject the Hansard Reports to arguments or questioning in a court of law.*" Section 26 of the Legislative Assembly (Immunities, Powers and Privileges) Law purported to exclude the jurisdiction of the Courts in respect of the permissive power.

21. In those circumstances, the Defendant consented to vacate the 25 October 2017 hearing pending judicial review proceedings as indicated in the Order dated 23 October 2017.

22. As the Plaintiff is the recipient of a Legal Aid Certificate, a delay occurred in obtaining Legal Aid for Judicial Review proceedings. After abiding by the protocol which requires an attempt to resolve issues without proceedings, the Plaintiff applied for leave to bring judicial review proceedings on 5 January 2018.

23. A leave hearing was ordered and the application was heard on 15 March 2018. Leave was granted and an Order perfected on 20 March 2018.

24. The Plaintiff's attorneys filed the required documents for a substantive hearing in accordance with GCR 0.53, including a Notice of Motion filed on 22 March 2018. The Attorney General indicated that the hearing would be contested. Attorneys for the Defendant were provided with notice of the leave application and the substantive hearings as an 'interested party' but declined to participate.

25. The substantive hearing was heard over two days, i.e. 29th June 2018 and 9 July 2018. Judgment was received 28 December 2018. Clarification was sought by both parties, i.e. the Plaintiff and the Attorney General of the Cayman Islands on behalf of the Speaker of the Legislative Assembly, on the Judgment following which a draft Order was submitted and finally approved 31 January 2019. The Order was perfected on 8 February 2019. It orders and declares that sections 11 and 26 were unconstitutional and of no effect.

26. The Plaintiff's attorney then engaged once again with the Legal Aid authorities to obtain legal aid for the proceedings. On 15 July 2019 the Legal Aid Certificate issues were resolved and the Plaintiff's attorneys sought an early hearing date. The 18 November 2019 was the earliest day offered.

27. The hearing of the 25 July 2017 Summons commenced on 18 November 2019 and continued on 10 December 2019 and Judgment was then reserved.

The Statutory Framework

28. The Limitation Law of the Cayman Islands was originally enacted in 1991. The current version is the Limitation Law (1996 Revision) ("the Limitation Law"). For present purposes the formal wording of the relevant provisions has remained unchanged.

29. 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.

30. It is not disputed that at the time the Limitation Law came into being the Insurance Law was already enacted. The question then becomes whether and if so to what extent the enactments relate to each other and, if they do, how they relate to each other and how the Court will consequently address the matter of an alleged implied repeal.

31. The starting point is in Part II of the Limitation Law which 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.

(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,

(6) If there is more than one personal representative, and their dates of knowledge are different, paragraph (b) of subsection (5) shall be taken as referring to the earliest of those dates.

(7) For the purposes of this section –

"personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate); and regard shall be had to any knowledge acquired by any such person while a personal representative or previously."

32. It is necessary to make at this point two additional comments.

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

34. Secondly, the only pertinent definition of personal injury is contained in section 2(1) of the Limitation Law as follows:

"*personal injuries" include any disease and any impairment of a person's physical or mental condition, and "injury" and cognate expressions shall be construed accordingly*;""

35. This may fairly be characterized as more of an inclusive description rather than a narrow definition.

36. Part III of the Limitation Law is headed, "*Extension or Exclusion of Ordinary Time Limits*". It is noteworthy that as also in the case of Part II this heading is a broad and generic description.

37. Section 39 of the Limitation Law is included within Part III. It addresses Discretionary Exclusion of time limits and it states:

> "*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 who 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 relates.*
>
> *(2) The court shall not, under this section, disapply section 16(1) except where the reason why the person injured could no*

longer maintain an action was because of the time limit in section 13.

(3) In acting under this section, the court shall have regard to all the circumstances of the case, and in particular, to –

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 13 or 16 (as the case may be);

(c) the conduct of the defendant after the cause of action arose, including the extent, if any, to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertain facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages; and

(f) the steps, if any taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(4) In a case where the person injured died when, because of section 13, he could no longer maintain an action and recover damages in respect of the injury, the court shall have regard in particular to the length of, and the reasons for, the delay on his part.

(5) In a case under subsection (4) or any other case where the time limit or one of the time limits depends on the date of knowledge of a person other than reference to the plaintiff, subsection (3) has effect mutatis mutandis and in particular as if a reference to the plaintiff included a reference to any person whose date of knowledge is or was relevant in determining the time limit.

(6) A direction by the court disapplying section 16(1) shall operate to disapply to the same effect section 3 of the Torts (Reform) Law (1996 Revision).

(7) A reference in this section to section 13 includes a reference to that section as extended by this Part or Part IV.

(8) In this section –

"court" means the court in which the action has been brought."

38. Accordingly where it is legally permissible and also appropriate to do so the Court under this section may exercise a broad equitable discretion to allow an action to proceed having regard to all the circumstances of the case.

39. Part IV of the Limitation Law is headed "*Miscellaneous and General*" and in Part IV section 44 in respect of Savings, etc. 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."*

40. According to the Defendant this savings provision preserves the exclusive application of the Insurance Law in cases of motor vehicle accidents.

41. It is clear that the overarching objective of the Insurance Law is to require that the users of vehicles be insured against third party risks.

42. Section 2(1) of the Insurance Law defines "*vehicle*" in this manner:

> *"vehicle" means a wheeled vehicle capable of being driven or towed on a road and includes an electrically powered vehicle, motor cycle, scooter, wheeled trailer and autowheel, but does not include a hand cart, barrow or baby carriage."*

43. Section 3(1) then states:

> *"3.(1) Subject to this Law, it shall not be lawful for any person to use, or to cause or permit any other person to use, a vehicle on a road, unless there is in force, in relation to the user of the vehicle by that*

person or that other person, as the case may be, such policy of insurance in respect of third party risks as complies with this Law."

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

> "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*."

45. 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.

An Outline of some Aspects of the Functions of the Court

46. In approaching the determination of this matter the Court bears in mind a number of broad general principles.

47. First, it is accepted by the parties and recognized by the Court that the burden of establishing an implied repeal lies on the party asserting it, in this instance the Plaintiff.

48. Secondly, a further set of principles of statutory interpretation is helpfully set out at paragraph 9 of the Defendant's Written Submissions dated 29 October 2019 which states:

> "*9. Implied repeal is described in Bennion on Statutory Interpretation in the following way:*
>
> *'[6.10]*

1) *Where the provisions of an Act are inconsistent with the provisions of an earlier Act, the earlier provisions may be implied repealed by the later. A similar principle applies to the abrogation of common law rules: see Code s.25.8.*

2) *The doctrine of implied repeal is subject to the following qualifications:*

(a) *there is a general presumption against implied repeal, the strength of which varies according to the context;*

(b) *it is doubtful whether a constitutional statute can ever be implied repealed;*

(c) *the presumption against implied repeal is also particularly strong where general provision in an Act covers a situation for which specific provision is made in an earlier Act.'"*

49. Thirdly, in addition to a general presumption against implied repeal, there is the further principle also set out by Bean J in *Pattinson v Finningley Internal Drainage Board* [1997] 2B 32 at page 38, that special Acts are not repealed by general Acts unless there is some express reference to the previous legislation or unless there is a necessary inconsistency in the two Acts standing together.

50. The learned judge refers at pages 37-38 to earlier authorities including a case where Viscount Haldane had described this principle as a presumption which arises in the same broad circumstances above described by Bean J.

51. At this preliminary stage it suffices for this Court to state that if the context renders it necessary for either or both of these formal presumptions to be overcome and displaced then they may be so overcome and displaced without any undue difficulty. The Court would then of course still continue to proceed upon the basis that the burden of

establishing an implied repeal lies on the Plaintiff in this case who is seeking to establish it.

52. Fourthly, in the course of this judgment if will be necessary to consider and if appropriate to apply the well-established principles in *Pepper v Hart* [1993] AC 583.

53. In summary terms, this principle states that subject to any question of Parliamentary privilege, the rule excluding reference to Parliamentary material as an aid to statutory construction should be relaxed so as to permit such reference where (a) legislation was ambiguous or obscure or led to absurdity, (b) the material relied upon consisted of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as was necessary to understand such statements and their effect and (c) the statements relied upon were clear.

54. The initial question for the Court will be to decide whether certain Hansard statements pertinent to the passage through the local legislature of the Limitation Law itself are ruled to be admissible for the purposes of this hearing. Then if they are so admissible the Court would proceed to decide what weight, if any, the Court might properly give to those extracts in reaching its ultimate conclusion.

55. In practical terms the Court must examine this extrinsic evidence in order to determine its admissibility and whether by admitting it the Court will derive real help from doing so.

56. In fact it is the Plaintiff's conclusion as set out at paragraph 67 of the Plaintiff's Written Submissions, that this Parliamentary material "*would certainly settle the matter.*"

57. The Court will therefore examine the material and will consider what real help it would derive if the material is then admitted. This process is not a difficult process. However, for reasons of clarity it is important for the Court to state how it is proposing to address it in this way from a procedural perspective.

The Legal Arguments of the Plaintiff

58. Having dealt with a number of essential introductory issues, it is now necessary to address the legal arguments of the Plaintiff.

59. At paragraphs 3-5 the Plaintiff sets out the major propositions upon which reliance is placed:

> "*3. The Defendant asserts that the Limitation Law has no application and limitation in the case of a road traffic accident is governed by s.17 of the Vehicle Insurance (Third Party Risks) Law (2012 Revision) ("s.17" and the "2012 Insurance Law"). It follows that the Court would have no jurisdiction to extend time or exercise its discretion to disapply tortious time limits for those under disability, affected by fraud or mistake, those who discover the true nature of their ability, affected by fraud or mistake, those who discover the true nature of their injury outside the 3 year period, or in any other case in which a court considers it equitable.*
>
> *4. We submit this result would be unjust and anomalous and the distinction between the two statutes is anomalous, irrational and repugnant. In the construction exercise the Court must look at the context in which the Limitation Law was passed. This includes identifying the mischief aimed at. It was transformative legislation designed to reform tort law. One of the mischiefs aimed at was the unfairness of subjection accident victims to a strict limitation period when equity demanded the exercise of a discretion. The case meets the relevant test in Pepper v Hart [1993] AC 593. The Court should review Hansard entries that explain the true position. The relevant Hansard entries make it clear beyond argument that the Limitation Law was intended to cover traffic accidents.*

5. *The situation is a historic accident. The predecessor of the 2012 Insurance Law was directed to wholly different issues than limitation but at a time when there was no limitation provision in respect of tort whilst the Limitation Law was introduced as a comprehensive scheme, save where expressly set out, to cover, inter alia torts and personal injuries. Had the situation been identified when the Limitation Law was passed there would have been express repeal. Traffic accident victims are not singled out to deprive them of rules of fairness and justice. Indeed they were expressly given by the promoter of the Bill as examples of whom the Limitation Law covered and protected."*

60. There follows a brief history of the delays in the hearing of this application, partially resolved by an Order of Nova Hall J (Acting), which we have seen disposed of any alleged constitutional impediment to the legal admissibility of the Hansard extracts.

61. Section 17 of the Insurance Law is set out at paragraph 15, highlighting the saving clause "*notwithstanding anything contained in any other law or any rule of law and equity, ...*"

62. An excellent point is then made in paragraph 16, which with this Court concurs:

> "*16. A savings clause may qualify the provisions elsewhere in a statute to disapply it to enactments before the statute. It is trite law that legislation cannot bind its successors, so the first clause is irrelevant to this case.*"

63. The Plaintiff then submits at paragraphs 17-18 that if section 17 itself is impliedly repealed by the generality of the Limitation Law section 44(1) of the Law does not save section 17. Essentially, the argument is that if section 17 is impliedly repealed section 44(1) has no application, because by definition it can only apply to a period of limitation which is prescribed by or under any other unrepealed Law.

64. With all due respect to the Defendant, this is a logical concept which the Defendant in his arguments has never effectively refuted.

65. The point is then made that subject to the implied repeal of an earlier provision a gateway is then open for the exercise of what Kawaley J, in *Baldwin Martin Troy Day v Henry Merren and Elisha Hydes* (Unreported Judgment Grand Court Cause No 4 of 2019 dated 26 November 2019) succinctly calls "*a broad equitable jurisdiction to extend the usual limitation period for personal injury claims*".

66. The Plaintiff's formulation is set out at paragraph 19:

> "*19 It is s.39 of the Limitation Law that gives the Court a discretion to disapply s. 13 and allow an action to proceed notwithstanding the action is brought after the 3 year limitation period commencing (1) on the date on which the cause of action accrued (in this case 24th February 2012) or (2) the date of later knowledge of the victim. If the Limitation Law has no application then the Plaintiff will not be able to proceed with the Originating Summons. The Applicant's primary submission is that there is no other relevant applicable law prescribing a period of limitation.*"

67. The Plaintiff then engages in a historical analysis of statutory limitations in the Cayman Islands, emphasising that until the Insurance Law came into effect there was really no limitation period at all for torts or other wrongful acts relevant to personal injury.

68. The Court will later address the Court of Appeal Judgment in *Cruz-Martinez v Cupidon* [1999] 1CILR 177. However, for present purposes it is critically important to note and understand the context in which Collett JA refers therein to the Limitation Law 1991 as being "a *comprehensive reforming statute*." (page 180, lines 5-10).

69. In the opinion of the Court respectful attention must be paid not only to legal technicalities but also to legal concepts as they emerge.

70. The Plaintiff submits at paragraph 25 that the Legislative Assembly later simply overlooked that a limitation period had been introduced in the 1990 Insurance Law. If the intent was to introduce a comprehensive scheme in 1991, it is said that whatever was inconsistent with that intent would necessarily be impliedly repealed.

71. 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.

72. In relation to section 39, paragraph 26 asserts that section 13 having specifically covered all personal injury action in tort including those based on negligence and breach of duty, the plain policy behind section 39 was to relieve prospective personal injury claimants from the hardship that might result from a relatively short limitation to prevent injustice.

73. The difficulty is summarized in this way at paragraph 28:

> "*28. There is no policy reason why the victims of traffic accidents should be in a worse position or defendants or motor insurers should be in a better position than other tortfeasors or insurers. Such a distinction would, apparently, be unique to the Islands. There is no such special limitation provision in respect of traffic accidents in the UK or, so far as we can find, other jurisdiction. Victims of traffic accidents are as entitled to equity as any other personal injuries victim. Such an artificial and unfair distinction is both absurd and anomalous. This plainly was not the legislative purpose.*"

74. The Plaintiff then moves on to deal with the principle of implied repeal, relying inter alia upon the definition of A.L. Smith J in *West Ham Church Wardens v Forth Mutual Building Society* [1892] 1QB 654 at page 658:

> "*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.*"

75. Mr. Timms QC also relies upon a statement by Laws LJ in *Thoburn v Sunderland City Council* [2002] EWHC 1995 at paragraph 37 of his Judgement:

"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."

76. While none of this learning is materially in dispute, it is nonetheless important for the Court to state that what is essentially in dispute is the context of the Insurance Law and the Limitation Law. It is the respective factual circumstances which require elucidation, and it is for this reason that the admissibility of and reliance upon the relevant Hansard extracts may will be especially beneficial as an aid to construction in the interests of justice.

77. Illogicality and injustice are fundamentally in no one's interest.

78. Returning at this point to the text of the Plaintiff's submissions, paragraphs 36 and 37 state as follows:

"36. This case actually meets all the criteria for when a statute is repealed by implication:

36.1 The entire subject matter of {the provision in} the first statute is taken away by the second, especially in circumstances in which the Legislature is attempting to set out a comprehensive code.

36.2 The two standing together would lead to absurd consequences; or

36.3 The relevant provision of the earlier statute is plainly repugnant to those of the subsequent statute.

37. 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. The Court is entitled to use all the tools to determine that intent. The general principle that special Laws are not repealed by general Laws gives way when there is necessary inconsistency between them: Pattinson v Finningley General Drainage Board [1970] 2QB 32, 38F. Inconsistency must be apparent (as it is in this case). The Limitation Law on its face purports to apply to all personal injury cases. The Court of Appeal has held it to be a comprehensive scheme and its context confirms that to be the case."

79. The Plaintiff then goes on to identify the related principle of repugnance, arguing that the Court has to suppose that the legislation has a consistent design and policy and intends nothing that is inconsistent or incongruous, and stating again that the Court must give effect to legislative intent.

80. The argument continues at paragraph 41:

> *"41. The inconsistency between s.17 of the 2012 Insurance Law and the qualifying provision in subsection 13(4)(b) Limitation Law is manifest and repugnant. The s.17 provision is different from and inconsistent with the overall scheme for tort claims. (See rationale of Court of Appeal in* ***Cruz-Martinez v Cupidon*** *ibid, 180 line 4-12, 40-45, 181 line 30-35). The court should investigate how an unsatisfactory result has been achieved and construe the legislation as a whole."*

81. There is then an important discussion of the decision *Cruz-Martinez v Cupidon* at paragraph 42:

> *"42. The Court of Appeal in Cruz-Martinez v Cupidon ibid had to consider not only s.44(1) of the Limitation Law, but also s.16 that conflicted with the former legislation under scrutiny. It raised a problem different from this case. The Court of Appeal did so by first looking at the historical context enabling it to construe the legislation as a*

whole (180 line 44 to 181 line 28). We invite the Court to follow this approach. The Court of Appeal, though, was faced with a specific saving provision as s.16 referred back to s.44(1). It was concerned that this nullified attempts at implied repeal. That is not the situation is this case. It does not appear that Hansard was cited, no doubt, because it was silent on the particular statutes being considered. Thus the Court was not assisted by the clear expression of legislative intent as in this case. The Court of Appeal was thrown back on looking at the legislative intent of the English model for s.44(1) and then looking at the legislative purpose in introducing it here. It arrived at an ingenious conclusion (reading words into s.44(1)) to reconcile the mischief rule with the decision dispensing with a specific savings clause. There is no specific saving provision applying in this case. The legislative intent, so far as traffic accident personal injury cases, as evidenced, is express. The court in is this case is, thus, armed with a different took for a different problem. The Court of Appeal was unable to consider the whole of the Limitation Law from that perspective. This Court can look at implied repeal in the context only of an imported general savings clause that cannot trump repugnance and clearly expressed legislative intent."

82. Both parties sought to rely on this authority for contrasting purposes, the Plaintiff adopting a broader interpretation and as we shall see the Defendant adopting a narrower interpretation.

83. At this stage the Court will simply make some selective but important observations on the *Cruz* Judgement.

84. 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).

85. 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).

86. 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). 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.

87. An argument that the Cayman Islands Legislative Assembly has deliberately opted to preserve old periods of limitation is not necessarily an impressive argument, and the preference of the Court is for "*the route of purposive construction*" (See page 182, lines 20-30).

88. While the Court of Appeal applied section 44(1) to the matter in hand, it did so narrowly rather than at large to the question before it. By way of illustration, Collett JA states at page 182, lines 40-45 – page 183, lines 1-10:

> "*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 of 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."*

89. As this Court understands the Plaintiff's contention, however, in the instant case, while being mindful of the principles enunciated by the Court of Appeal, consideration of section 44(1) does not arise in any event because the limitation provision in the Insurance Law has been repealed and so is not relevant in any way or to be found any longer in "*any other Law*".

90. Obviously as the Court has pointed out the Defendant adopts a much narrower approach to how and why section 44(1) becomes engaged.

91. The text of the Plaintiff's Written Submissions continues at paragraph 45:

> "*45. The Limitation Law savings clause is a direct copy from the s.39 Limitation Act 1980 and it signifies nothing about the legislative intent to preserve s.17. The saving clause is therefore but one factor in true construction. Where there is tension between two provisions in the later statute the Court is permitted to look at extrinsic evidence within the Pepper v Hart principle to resolve the issue (see paragraph 61 below).*"

92. The Plaintiff concludes in this way at paragraph 49:

> "*49. 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 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.*"

93. With reference to the Defendant's argument that the 2012 Revision of the Insurance Law itself postdates the Limitation Law, the Plaintiff submits at paragraph 50:

> "***Law Revisions***
>
> *50. 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."

94. On this particular point the Court has no difficulty in concluding that the Plaintiff is entirely correct.

95. In the case of *Cole v NEM (West Indies) Insurance Limited [2009]* CILR 367 and W*ood v Thompson and Saxon MG Insurance Company Ltd.,* (Unreported, Cause No. G229 of 2015), both Foster J and Mangatal J referred to section 17 of the Insurance Law.

96. However, neither learned Judge was addressed as to the issue of implied repeal, nor was it raised in any form. Moreover, Foster J indicated at paragraph 12 of his Judgement that section 17 of the Insurance Law, "*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 Law".*

97. As is now clear, that assumption is factually incorrect.

98. In the event that the Plaintiff's case is made out in accordance with the legal burden placed upon the Plaintiff, then this Court would also necessarily be convinced that insofar as section 17 had been relied upon by those learned Judges they were wrong in doing so. Such a decision in the present case would not in any event impinge upon the actual *ratio decidendi* adopted in either of those other cases nor the entirely correct decisions at which the learned Judges respectively arrived. The Court will return to these authorities later in this Judgment.

Hansard and the Rule in Pepper v. Hart

99. By this stage the Court has set out a number of aspects of the Plaintiff's arguments. Specific mention has already been made of the principle in *Pepper v Hart*.

100. In considering whether to admit the material sought by the Plaintiff and opposed by the Defendant it is essential to determine the nature of that material so that in due course the Court can consider whether the material will be of real help in resolving the case and in arriving at a properly informed decision.

101. In introducing the Limitation Law 1991 the Attorney General, the Honourable Mr. Richard Ground made a number of related statements. The Court has formed the view that notwithstanding a general desire for brevity it is crucial to set out certain passages at full length. Not only are the passages intrinsically important but it is moreover in the public interest that they be appropriately highlighted by this Court.

102. The Attorney General introduces the subject in this way:

> *"Madam Speaker, I rise to move the second reading of the Limitation of Actions Bill, 1991. Madam Speaker, this is a Bill for a Law to repeal and replace the existing Limitation of Actions legislation which is presently contained in the Limitations Law, which was one of those Laws that the Cayman Islands inherited from Jamaica in 1962.*
>
> *The Limitation of Actions, to a lawyer anyway, deal with the time limits that apply to the bringing of actions in court after whatever is the subject of the litigation, the time limit after that has arisen. Though a simple thing to state, can be very complicated when one gets down to the detailed rules that apply to the various different courses of action.*
>
> *Our existing Law is, I regret, rather archaic. I think that anyone who tries to read it will find first of all, that it contains elaborate and convoluted provisions relating mainly to concepts of land holding that have no longer been preserved since the Registered Land Law greatly simplified Cayman's land legislation. The existing Law also deals with the limitation of actions, in other words the time limits, for debts and actions for breach of contracts, but it is singularly unhelpful in that it*

refers us back to a statue 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.

Finally, the existing Law is defective in that it contains no provisions whatsoever relating to the time limits that apply to actions in what lawyers call "tort". Tort is very much a legal concept, but basically it embraces and gathers up under that one name all the forms of action or causes of action that arise out of wrongful acts. So it stretches from actions for harm that may be caused by negligence through nuisance and trespass, to actions for theft or conversion of other people's goods. It is a great portmanteau of a category of legal actions.

The Law that relates to tort and to all these different heads of claim is something which has very much grown up over the last century, and that may well be why it has been omitted from the existing Cayman legislation.

The time has definitely come to remedy the archaism of the existing Law and to do that the Bill which is put forward is based very largely upon the existing United Kingdom legislation with some fine tuning to adjust to local conditions and in particular to adjust to the specific provisions of the Registered Land Law."

103. At a later point the Attorney General made the following comments, which are directly quoted at paragraphs 70 and 71 of the Plaintiff's Written Submissions and which the Plaintiff has in some places chosen to underline:

"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. And there may be cases of poisoning (and I hope that these do not arise in Cayman islands but one has to make provision for all eventualities), cases of industrial injury, cases of medical negligence, where the person who has been harmed may not realise sometimes until many years later. There have been examples in the UK and the United States of carcinogenic substances causing damage to workers to does not arise, they have no idea that injury has been done to them until many years later when they develop a specific cancer. In such a case the three years for bringing their action dates from the time when they_discovered the harm. Then there are various rules set out in the law which we will come to shortly. Various rules as to when a person has deemed to have discovered a harm [sic] [Emphasis added] (Hansard 19th June 1991, 388)."

104. The Attorney General a little later amplifies his presentation in this way regarding section 39:

> *"Clause 39 is an important provision. It provides that where it appears to the court that it would be equitable – for equitable one may just simply read fair – to allow an action to proceed, having regard to the degree to which the provisions relating to the limitation period for personal injury or fatal accidents, which is three years, might prejudice a plaintiff – and also having regards to the degree to which a decision to extend the period might prejudice a defendant – balancing those two interests, the defendant's and the plaintiff's the court may, in personal injury accidents or in the case of deaths caused by personal injury, it may extend that three year time limit in its discretion. When considering whether to extend that time limit, the court has to have regard to all the circumstances of the case and in particular, to a list of particular factors. Those particular factors are set out in subsection (3) and they include the length of and the reasons for the delay, and so on.*
>
> *So, though at first glance it might it might seem that the three year period for personal injury might in particular cases be rather short, there is this saving provision where the court in extremis and for good cause shown, can extend that period to prevent an injustice."*

105. Irrespective of how this case may be decided what is completely beyond doubt is that this is what the people of the Cayman Islands were clearly and authoritatively told about their new Limitation Law and its purpose and intention.

106. The Plaintiff concludes in this way at paragraph 74 of the Written Submissions:

> *"74. The matter is beyond doubt when one looks at the expressed intent of the Legislature and the court should give it great weight. Allowing s.17 to obstruct the remedy granted by s.39 of the Limitation Law to avoid injustice would be to thwart the legislative*

intent. We respectfully submit that interpreting s.17 to exclude s.39 introduced difference and inconsistency with the overall scheme for tort claims. It is legally absurd. The legislation must be construed as a whole to give effect to legislative intent. S.17 must accordingly be determined to have been impliedly repealed."

107. Finally on this subject the Court itself draws particular attention to *Ming v R* [2009] CILR Note 28, where the Court of Appeal has 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 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."*

108. If, however, on a proper construction of the provision in question that intention can be discerned and the discernment is overwhelmingly supported by the identifiable intention of the legislature as duly expressed, it would not seem that any impediment arises. Indeed, in the *Cruz* case the Court of Appeal saw fit to adopt a purposive construction supported by both history and context aiding that discernment.

The Legal Arguments of the Defendant

109. As the Court has previously noted, the burden of showing implied repeal lies on the party asserting it. For this reason, in addition to other reasons, it has been necessary to scrutinize and to examine the Plaintiff's case with a high degree of care. Having done so, it is now necessary for the Court to consider the Defendant's submissions and whether the Plaintiff's arguments have been shown to be defective and insufficient.

110. As the Defendant states in paragraph 2 of the Defendant's Written Submissions, if there had been no implied repeal and section 17 of the Insurance Law subsists the Plaintiff's claim is statute-barred and no discretion to disapply primary limitation exists.

111. With respect to timing, the Defendant states at paragraphs 4-6:

"The Legislative History

> *4. S.17 of the Insurance Law was originally enacted under Law 12 of 1990 (18 July). That Law was consolidated, later, with Law 7 of 1991 (8 March) and was, later still, the subject of successive revisions, during which s.17 remained undisturbed.*
>
> *5. The Limitation Law was enacted under Law 12 of 1991 (3 July) just five laws after the Insurance Law was under consideration and was consolidated with another Law and almost exact one year after its initial coming into force. We are not therefore considering, in this exercise, pieces of legislation that were passed many years apart or under radically different social or economic circumstances. Rather, the Laws were passed in close proximity to one another.*
>
> *6. Both of the Laws were materially unchanged by various revisions over time, to the present".*

112. As the Court understands it, the point made is that if these Laws were passed in close proximity then the legislature in passing the second enactment may well have had in mind or did have in mind the first enactment as well. Notably the further point that the Insurance Law was not consolidated in 1991, when in fact there was simply a short amendment to it, has since been conceded by the Defendant.

113. With great respect as to this narrow issue, the Court declines to speculate in such a manner. The Court must refrain from speculation particularly where the inference which

the Defendant endeavours to draw in the opinion of the Court is not a necessary one that has to be drawn or the only inference that can be drawn or even the probable one.

114. More broadly, however, the Defendant states at paragraph 11 that in order to establish implied repeal the Plaintiff must establish that the Limitation Law is so inconsistent with or repugnant to section 17 of the Insurance Law that the two cannot stand together.

115. The Defendant continues in paragraph 13 that section 17 addresses itself to a narrow subset of accidents, viz., those caused by a motor vehicle to which that Law applies, meaning in essence all insured vehicles. It does not address itself to any wider context of personal injury claims.

116. The argument then proceeds in paragraph 14:

> *"14. S.13 of the Limitation Law expresses itself to apply to any action where there is included a claim for personal injuries. It is therefore a general provision in that it addresses the broadest width of personal injury actions. However, that provision cannot be read in isolation, for to do so would be to ignore its proper context. It must be read with s 44(1) of the Law, which suggests that actions for which limitation periods set out in other laws will not be subject to the Limitation Law."*

117. The Court will only comment at this stage that if there is an implied repeal by virtue of the Limitation Law then there is no other Law to which in regard to motor car personal injuries section 44 (1) and section 17 of the Insurance Law can attach in the first place. It is in regard to this kind of assertion by the Defendant in paragraph 14 that the *Cruz* decision appears at any rate to provide a conceptually valid refutation.

118. Moving on to the subject of presumptions as applied to the Defendant's proposition set out in paragraph 14, the Defendant adds:

> *"16. The Insurance Law holds the benefit of the heightened presumption against implied repeal, because it is plainly a*

specific provision and the Limitation Law is a general provision. The plaintiff's burden is therefore a heavy one and in those circumstances, the degree of inconsistency or repugnancy to be shown must be great in order to rebut that heightened presumption."

119. With respect to the presumption that general provisions give way to specific ones, the Court considers such a presumption by no means to be dispositive in the circumstances of this particular case.

120. It may well be displaced by context, such as Hansard may provide, and by intrinsic construction which the *Cruz* case exemplifies. Therefore in relation to this narrow issue the Court takes fully into account the strength of the arguments which the Plaintiff has put forward and the Court concludes that because of the circumstances of this case that presumption is properly overcome and displaced. The Plaintiff's arguments outlined earlier are much too formidable to be dismissed presumptively in that manner.

121. This in effect means as stated previously that the burden remains on the Plaintiff to prove the Plaintiff's case in the normal way.

122. The Court would add also at this stage that in light of the strength of the Plaintiff's arguments the Court concludes that in the circumstance of this case the additional presumption against implied repeal is likewise properly overcome and displaced. The Plaintiff's arguments are simply too formidable and they readily overcome any adverse presumption to the contrary effect.

123. Similarly this in effect means that the burden remains on the Plaintiff to prove the Plaintiff's case in the normal way.

124. The Defendant next places explicit reliance upon the *Cruz* case at paragraph 17:

"17. The Court of Appeal supplied authority against the plaintiff's position, in the case of Cruz-Martinez v Cupidon [1999 CILR 177]. There the Court was presented with wholly different limitation

periods between that prescribed in the Limitation Law and that set out in the other Laws, namely the Estate Proceedings Law and Torts Reform Law. The Court of Appeal in that case was directed to s44(1) of the Limitation Law by those relying upon the earlier Laws and asked to find that the earlier Laws took precedence. The decision of the Court of Appeal turned on interpreting s44(1). It was decided that the Limitation Law referred itself to actions which were the subject of limitation periods prescribed by other Laws relied upon in that case fell within the category exempted from that reading of s44(1) and so the limitation periods set out in the earlier Laws were the subject of implied repeal.

The Insurance Law is not mentioned in the Limitation Law. Under the interpretation of s44(1) of the Limitation Law adopted by the Court of Appel, the limitation period set out in s17 of the insurance Law dominates. There is no conflicting Court of Appeal authority on this point and no court of first instance in eh Cayman Islands has refused to follow it as far as our researches have been able to identify. No means exists to distinguish this case from Cruz in such a way as to read s44(1) in any other than that decided by the Court of Appeal. The decision is stark and straightforward: because the Insurance Law is not mentioned in the Limitation Law, s44(1) applies and the limitation period set out in the Insurance law is the appropriate period to apply."

125. The submission of the Defendant is in practical terms encapsulated in the final sentence of paragraph 18. This summary leads the Court to a number of observations.

126. First, the reference to personal injury in section 13 of the Limitation Law is certainly on its face unqualified. Section 13(1) states that this section applies to any action for negligence, nuisance or breach of duty.

127. Secondly, under section 13 4(a) and (b) of the Limitation Law the period applicable is three years from, (a) the date on which the cause of action accrues; or (b) the date of knowledge (if later) of the person injured. In contrast, under section 17 of the Insurance Law the period is of three years from the date on which the cause of action accrues for any injury or damage against or in respect of which a vehicle is required to be insured under that Law. It is frankly insufficient to dismiss the existence of such a distinction as simply a meritless point when much more aptly the Court finds the distinction if it exists in law to be a completely absurd one. However, if the prior limitation period has been impliedly repealed then no absurdity survives to be distinguished in this manner.

128. Thirdly, the Defendant's distorted analysis of the *Cruz* case ignores the broad purposive methodology expressly favoured by the Court of Appeal in order to discern and resolve the relevant matters of construction and interpretation in that case.

129. Fourthly, 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, 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.

130. The Court has no difficulty concluding for these reasons that the Defendant's analysis of the *Cruz* case is wrong and that the Plaintiff's analysis of the *Cruz* case is right.

131. As far as the implications of this ruling for the broader outcome of the case at large are concerned, these will be dealt with later in this Judgment.

132. The Defendant at paragraphs 21 and 22 refers to the *Cole* case, and in particular to the comments of Foster J that section 17 of the Insurance Law supersedes the provisions of the Limitation Law in relation to personal injury sustained in an accident involving a motor vehicle. These comments were not germane to the actual outcome of that case, nor

to the outcome of the *Woods* case where Mangatal J at paragraph 56 seems to have assumed that Foster J's reasoning as to a limitation period of three years was correct without examining the matter nor questioning the central assumption that the Limitation Law was superseded when in in fact is was not.

133. The Defendant makes the following claim at paragraph 24:

> "24. *The plaintiff therefore faces two Grand Court cases of coordinate jurisdiction and one Court of Appeal authority that stand against her argument, none of which are materially distinguishable, and all of which support the defendant's position. The plaintiff cannot show that those decisions are so distinguishable or plainly wrong that they should not be followed."*

134. In the opinion of the Court, the Defendant has entirely misconstrued the reasoning of the Court of Appeal in the *Cruz* case. Furthermore in relation to both the *Cole* case and the *Woods* case on an entirely understandable basis, because implied repeal was never argued, this Court is convinced that the learned Judges were plainly and obviously wrong. On this submission as to the application of the Cayman Islands authorities the Defendant is plainly and obviously wrong as well.

135. The Defendant then turns to the central issue of repugnance and whether it justifies a finding of implied repeal.

136. It is pointed out at paragraph 26 that both the Insurance Law and the Limitation Law prescribed the same limitation period and that the Limitation Law does so in general circumstances and the Insurance Law in specific circumstance. The submission continues:

> "*The Limitation Law allows exceptions and extensions in the general circumstances to which it applies. The Insurance Law does not. That is*

not repugnant, firstly because the Insurance Law applies only to a subset of personal injury cases and secondly because there is an obvious commercial rationale for setting a hard limitation deadline in compulsory motor insurance cases as opposed to general injury cases. The motor insurers are required between them to carry the risk of every driver on the roads of the Cayman Islands and the indemnity they are required to provide is substantial. It is hardly surprising that some form of certainty concerning limitation should be offered to those insurers by removing extension or disapplication. Secondly, as will be dealt with again later, motor vehicle accidents rarely give rise to circumstances where an individual would not know that there had been an accident in which they were injured for the purposes of starting time against them. If they lack capacity be reason of disability or youth, those responsible for them would equally know that the injuries arose in the course of the motor vehicle accident and it works no injustice for time to run against the injured party in those circumstances from the date of the accident."

137. The argument proceeds as follows at paragraph 27:

"*The distinction to be drawn between motor vehicle accidents and, for instance, medical mal-practice is stark. In the latter case, one may not know that anything has gone wrong, much less be able to judge whether or not what went wrong did so in circumstances amounting to negligence without the assistance of expert advice. Those are the sorts of cases, along with cases such as slow-developing industrial disease or physical / psychological / sexual abuse suffered as a child leading to psychiatric difficulty (the classical three forms of injury giving rise to most of the personal injuries limitation learning the UK), to which the constructive knowledge and /or disapplication of primary limitation sections of the Limitation Law are designed to assist.*"

138. This submission essentially propounds that there is a sensible reason for the distinction already identified between the respective enactments.

139. It is therefore a submission of a different character from those which the Court has already identified and occasionally commented upon. In weighing the arguments of the parties and determining whether the Plaintiff has discharged the legal burden placed upon him, the Court duly takes it into account.

140. As to how much weight if any the Court will accord it, this will depend on whether the extracts from Hansard are admitted for consideration and evaluation. If they are so admitted, then whatever strength the point has diminishes virtually to nothing in the face of stark reality.

141. Turning to the admission of the excerpts from Hansard, the Defendant submits that the rule in *Pepper v Hart* only arises where there is one particular piece of legislation that is ambiguous or obscure or leads to an absurd result, and not where as in this instance there are two proposed pieces of legislation.

142. Mr. Wingrave's argument proceeds in this way at paragraphs 31-33:

> "*31. It is not accepted that the use of Hansard is permissible in cases of implied repeal where one is not concerned with the meaning of any particular provision but rather with the tension between them. The plaintiff has in PSK not suggested that either piece of legislation is ambiguous or obscure. Plainly, none of the sections under review are ambiguous or obscure. There is nothing in the Limitation Law that is obscure or ambiguous or absurd. The Law has been successfully interpreted by the Court of Appeal and the Grand Court without reference to Hansard on at least three occasions. There is simply no basis upon which the Court may examine Hansard under Pepper test. This general proposition derives support from the Judgment of Lord Justice Laws in Thoburn, at paragraphs 75 and 76, delivering a reminder that strictness was*

still are requirement when being asked to consider Hansard. It is not the Limitation Law that leads to any absurdity.

32. *The dangers of seeking to satisfy the Pepper test when dealing with implied repeal were pointed out by the English Court of Appeal in the case of O'Bryne v Secretary of State for the Environment, Transport and the Regions and Croyden LBC [2001 EWCA Civ 499, at paragraph 29 and 31. Reduced to a few simple words, the point being made there is that if one must look at Hansard to determine the intention behind a piece of legislation it is not stark or clear enough to repeal by implication another piece of legislation. That proposition carries obvious force and logic. The plaintiff cannot have it both ways: either the provisions in the Limitation Law are unambiguous and stand or fall on their plain meaning or there is some uncertainty surrounding what those words mean, which makes reference to Hansard necessary. If the latter is the case, the Law is simply not sufficiently clear or robust to repeal by implication in any other Law. The logic of this proposition is both simple and inescapable.*

33. *To the extent that it is argued that potential injustice is worked on plaintiff's by s17 of the Insurance Law and an attempt is made to parlay that into absurdity that might justify recourse to Hansard for the purposes of interpreting s17, the defendant opposes that course. Even if established, this argument would not justify examination of the Hansard entries concerning the Limitation Law and sort of comparative analysis the plaintiff urges for the simple reason that unless the Insurance Law is mentioned by the promoter, which objectively unlikely on any sensible view, the material will necessarily and logically appear to be all one way."*

143. It is to be noted that the Plaintiff's own case rests on absurdity and not on obscurity or ambiguity, and in order to advance that case the Plaintiff obviously needs to juxtapose and compare the two enactments. In effect, the Defendant wants to place a *cordon sanitaire* around each Law so as to render any such examination of absurdity impermissible.

144. The Court considers the *Pepper v Hart* principle is relevant to statutory construction at large. It is not restricted to the examination of individual legislation on a piecemeal basis. Such a restrictive approach could lead to the Court being deprived of a facility which the modern law requires the Court to have available.

145. Moreover, while the Defendant is entirely at liberty to argue as it has been argued that no absurdity arises as between the Insurance Law and the Limitations Law, it would not be realistic to assert that there is no basis to argue that when the provisions are compared and contrasted no absurdity can conceivably arise.

146. In light of the way in which the arguments have developed, it is clear that a strong and legitimate argument arises as to whether there is absurdity in the respective legislation viewed not in isolated compartments but as a whole and together.

147. The Court furthermore accepts and finds that the material relied upon consists of more than one statement by the promoter of the Limitation Bill, viz., the Attorney General, that the statements relied upon are directed to the matter in issue, and that the statements are clear.

148. There is no reason why the Courts should blind themselves to a clear indication of what Parliament intended in using the words that Parliament used. As Lord Browne-Wilkinson wisely remarks at page 635 A-C of *Pepper v Hart*, why should not Parliament's true intention be enforced rather than thwarted?

149. In conclusion, the conditions for permitting reference to the material in question are fully made out, precisely as those conditions in principle are identified in *Pepper v Hart* itself.

150. In other words, the Court accepts the Plaintiff's contention that there is absurdity sufficient for the Court to enable Hansard to be consulted as to construction. There are issues of construction in this case which are of public importance and if real help can be derived from Hansard as the Court is confident it can be derived then the relevant passages must formally be made available.

151. Upon the basis that the use of Hansard is allowed, and indeed this Court following its deliberations has now so allowed it, the Defendant then argues that the extracts in question add nothing of substance to the current debate.

152. Significantly the Defendant does not address the substance of the Hansard extracts which have been set out above in this Judgment. For example, there is no discussion of the fact that the Attorney General specifically discussed personal injury arising from a motor car accident when dealing with section 13. Additionally, the Defendant does not touch upon the Attorney General's reference to the time having to come to remedy the archaism of the existing law.

153. If effect is to be given to every provision of the 1991 Limitation Law consistent with its manifest reformatory purpose, why should that manifestly reformatory purpose itself be denied?

154. Turning to the Plaintiff's Written Reply dated 8 November 2019, the point is made at paragraph 5 that section 44 (1) cannot be read in isolation. The Court agrees with this important observation.

155. Paragraph 9 repeats the submission that section 44 (1) as a general savings clause refers only to limitation periods in other statutes that have not been impliedly repealed. Once again, the Court agrees that whether there has been implied repeal bears directly on the ambit and application of this provision in the circumstances of this case.

156. In relation to the *Cole* case it is stated that the learned Judge did not have the advantage of an accurate historical context (which it seems the parties there misunderstood) or argument on either the true interplay of the statutes or on implied repeal. This expressed view is indisputably correct.

157. The Plaintiff argues at paragraph 13 that repugnance is not a "*scale*". Unless there is a rational reason that can be shown, such repugnance is clearly absurd, as it leads to an absurd result.

158. Paragraph 17 questions the Defendant's assertion that there is a rationale for distinguishing road traffic accidents. Frankly, if the Court is correct in admitting the identified passages from Hansard, it is obvious that there is no such rationale, and that relying upon the distinction is entirely and demonstrably misplaced. In that specific respect, for example, as an aid to construction these extracts are of very considerable value.

159. The extracts enable the Plaintiff to show that the Defendant is wrong.

160. The Plaintiff summarises the position on the use of Hansard at paragraph 20:

> *"20. The Defendant produces no authority to show that the use of Hansard is impermissible in cases of implied repeal. This is not surprisingly given that its use is as an aid to true construction. External aids such as background setting and legislative history or Hansard may shed light on the meaning of the statute. Indeed it may be that there even more cogent reasons to use this tool in implied repeal cases where one looks to give effect to the intent of the legislation. The Court should identify the mischief intended to be cured. We agree it is not the Limitation Law that leads to absurdity. It is construction of the Limitation Law when set in context with the earlier legislation that can lead to an absurd result to frustrate what the Legislature plainly intended."*

161. Over the course of two days both Mr. Timms QC and Mr. Wingrave supplemented and explained their Written Submissions.

162. At this stage it remains for the Court to remind itself that Courts cannot legislate. In addition, if the intent of the legislation can be readily discerned then that intent must be implemented.

The Findings of the Court

163. Implied repeal arises in order to give effect to the legislative will and to ensure that it is respected and followed as distinct from being undermined.

164. While it is recognized that there are significant differences between the parties, the differences are essentially more about the facts and the circumstances than about the relevant legal principles themselves.

165. For that reason in drawing this Judgment to its conclusion it will be necessary to identify certain broad issues for resolution rather than to entangle those issues in legal prolixities. There will be three separate aspects to this process.

166. At this juncture certain decisions already have been made.

167. The general presumption against implied repeal, the strength of which varies according to the context, has been overcome and displaced by the strength of the Plaintiff's case both historically and analytically.

168. The presumption that a general provision in a Law does not cover a situation for which specific provision is made in an earlier Law is likewise overcome and displaced for the same cogent reasons put forward by the Plaintiff.

169. Finally, it has now been decided that the extracts from Hansard do provide an aid to statutory construction and that the preconditions for their admissibility have properly been met.

170. Therefore what remains is for the Plaintiff to satisfy the burden of establishing that there has been an implied repeal.

171. The first and arguably the most important aspect of this matter concerns the historical background. It is described by the Plaintiff at paragraphs 20-23 of her Written Submissions. The Defendant briefly refers to it at paragraph 4-5 of his Written Submissions, and it is not a subject of serious disagreement.

172. However, what is significant is that in the *Cruz* case Collett JA gave great emphasis to investigating the historical context before attempting to construe the legislation as a whole (see page 180, lines 40-45 – paragraph 181 lines 1-5). It is notable that after undertaking that investigation

173. Collett JA at paragraph 182, lines 20-30 then states that he is not impressed by the argument that the Cayman Legislative Assembly has deliberately opted to preserve the old period of limitation, and that he prefers the route of purposive construction.

174. With great respect to the Defendant, the error into which he falls in submitting that the limitation period for a narrow subset of personal injury actions was never intended to be replaced or repealed is one of failing to recognize the need for purposive construction.

175. Once it is accepted that the purpose of the Limitation Law is to set out new and consistent periods of limitation in respect of legal proceedings of every description coming before the Courts of the Cayman Islands, then it surely follows that whatever it is inconsistent with that purpose is likely to be repugnant to it in the legal sense of the word. This is a central proposition which the Court in theoretical and practical terms adopts because it finds it to be lawful, logical and correct.

176. It now becomes necessary to address the second issue which flows from the first issue, and that is the issue of inconsistency and repugnance.

177. The Plaintiff's argument as to implied repeal rests on the allegation of repugnance, and that the legislation has a consistent design and policy and intends nothing that is inconsistent or incongruous. Looking at that inconsistency, are the provisions of the Limitation Law so inconsistent with or repugnant to the provisions of the Insurance Law that the two cannot stand together?

178. As it has been noted, the Defendant on the other hand emphasises that section 17 of the Insurance Law addresses itself to a narrow subset of personal injury action, namely that caused by a motor vehicle to which the Insurance Law applies, and the Defendant also relies on a narrow as distinct from a defined reading of section 44 (1) to support this reliance. In relation to the *Cruz* decision, as has been seen, the Defendant takes a

restrictive view, stating that the Court of Appeal had merely decided that the Limitation Law by virtue of section 44 (1) refers to actions which were the subject of limitation periods prescribed by other Laws, save those Laws that were expressly referred to and indeed specified in the Limitation Law.

179. After considering all of the arguments put forward and the legal enactments and authorities relied upon by the parties, the Court as a matter of construction adopts the broader view. 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.

Conclusion

183. In all the circumstances the issue of implied repeal is determined and resolved in favour of the Plaintiff.

184. One further point arises by way of comment. The Court is acutely aware that in proceedings of this nature there is very much a personal dimension as well as a legal dimension. Therefore it is hoped that following the decision set out above these proceedings can now move forward in whatever way is expeditious and appropriate and in the public interest as well.

Robin McMillan

THE HON. JUSTICE ROBIN MCMILLAN
JUDGE OF THE GRAND COURT

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