

Legal Translation
--Comment on the English translation of the Judgment
九龍漆咸道 27 A 號業主立案法團
對
李先生或非法佔用人（李啟剛、盧鴻鏘）
(CIVIL APPEAL NO. 2238 OF 2001)
-- YAM Wai Yee Alice

Introduction

After China has resumed her sovereignty to Hong Kong after 1 July 1997, the use of Chinese in Hong Kong courts (except the Court of Final Appeal) has been kept increasing. As Hong Kong remains its common law legal system and should keep in line with the development of common law in other jurisdictions, the translation of Chinese judgments into English becomes important and necessary. Needless to say, the source judgment should be authentic to its translated counterpart. However, most of the judgments are translated in good quality but some are poor. The latter shall undoubtedly cause misunderstanding and misinterpretation to the case and the legal principles therein. Owing to this reason, it is necessary to pick up those judgments with poor translation and amend them so as to avoid misunderstanding and misinterpretation. In this article, a poorly translated judgment¹ of the case 九龍漆咸道 27A 號業主立案法團 對 李先生或非法佔用人(李啟剛、盧鴻鏘) (Civil Appeal No.2238 of 2001)² shall be commented and suggested amendment.

Comment and Suggested Amendment

Cover Page

Source Text: 申請人 九龍漆咸道 27A 號業主立案法團

English Translation: **INCORPORATED OWNERS** OF NO.27A CHATHAM ROAD, KOWLOON Applicants

Comment: With reference to Section 7(2)(a) of the Building Management Ordinance Cap.344, (a) the name of the proposed corporation, which shall be in the form "The Incorporated Owners

¹ The English translated judgment of the case 九龍漆咸道 27A 號業主立案法團 對 李先生或非法佔用人（李啟剛、盧鴻鏘） (Civil Appeal No.2238 of 2001) can be retrieved from the website of the Department of Justice:
http://legalref.judiciary.gov.hk/lrs/common/search/search_result.jsp?txtSearch=cacv+2238%2F2001&txtselectopt=4&isadvsearch=0&query=%E7%A2%BA%E5%AE%9A&selDatabase=JU&selall=0.

² The original judgment written in Chinese can be retrieved from the website of the Department of Justice:
http://legalref.judiciary.gov.hk/lrs/common/search/search_result.jsp?txtSearch=cacv+2238%2F2001&txtselectopt=4&isadvsearch=0&query=%E7%A2%BA%E5%AE%9A&selDatabase=JU&selall=0.

of", clearly mentioned that the correct English translation of 業主立案法團 should be "THE INCORPORATED OWNERS". Therefore, the word "THE" should be added during the translation.

Suggested Version: **THE INCORPORATED OWNERS** OF NO.27A CHATHAM ROAD, KOWLOON Applicants

Paragraph 1

(i) **Source Text:** 申請人指答辯人非法佔用天台，並向土地審裁處申請以下命令：

English Translation: **On the ground that** the Respondents were illegally occupying the rooftop, the Applicants applied to the Lands Tribunal for the following orders:

Comment: For the word “指” in the original Chinese judgment, it means “指稱”, which indicates that this case has not been judged yet in fact and so it has not been proved that it is a fact at this stage. The applicant is now only “alleging/claiming” that the respondent is occupying the rooftop illegally. However, it seems that the meaning of its English translation was “the respondents have already been judged that they occupied the rooftop illegally”, whose meaning is different from the original judgment in Chinese.

Therefore, the phrase of “On the ground” is inappropriate while either the word “alleged” or “claimed” should be used to indicate the word “指”.

Suggested Version: The Applicants **alleged** that the Respondents illegally occupied the rooftop, they applied to the Lands Tribunal for the following order.

(ii) **Source Text:** ...停止於梯間棄置廢物以及不得竊取**公共電力及食水**；

English Translation: ...and prohibiting them from stealing **public utilities of electricity and drinking water**;

Comment: According to the English-Chinese Glossary of Legal Terms, “Public Utility” means “公共設施”, that means some public installation or facilities for public use. In the Oxford Advanced Learner’s English-Chinese Dictionary, this term means “a private company that must obey government rules, that supplies essential services such as gas, water and electricity to the public”. Therefore, the translation of “public utilities” is incorrect.

Suggested Version: ...and prohibiting them from stealing **public electricity and drinking water**;

Paragraph 2

Source Text: 申請人**不服判決**，現提出上訴。

English Translation: The Applicants now appeal against the ruling.

Comment: The translation for the phrase of “不服判決” has been missed, which should be translated as “did not agree with the judgment”.

Suggested Version: The Applicants **did not agree with the judgment and** now appeal against the ruling.

Paragraph 3

(i) **Source Text:** 周法官的**判決書**，

English Translation: The **Written Ruling** of Presiding Officer Chow.

Comment: Since “判決書” has already been translated on its cover page as “Judgment”, then making the same translation of it as “judgment” is more correct. Moreover, it is preferable to be more consistent for using the same translation “judgment” throughout the whole judgment.

Suggested Version: The **Judgment** of Presiding Officer Chow...

(ii) **Source Text:** 周法官的判決書指**答辯人李啓剛先生**於 1990 年 1 月自台灣返回香港後...

English Translation: The Written Ruling of Presiding Officer Chow indicates that, **upon his** return to Hong Kong from Taiwan in January 1990, Mr. Lee Kai Kong of the Respondent began to occupy...

Comment: There are two problems in this translated sentence. The original Chinese is “後”, but its English was translated to “upon”. The meaning of “upon” is “as soon as”, which is different from the original meaning of “後”(after). On the other hand, this sentence starts to mention that “Presiding Officer Chow indicates that”, and then carry on to indicate that upon “his” return to Hong Kong. It would be felt by the reader that Presiding Officer Chow returned to Hong Kong, but in fact, Mr Lee Kai Kong returned to Hong Kong rather than Presiding Officer Chow.

Suggested Version: Presiding Officer Chow indicates that, **after Mr Lee Kai Kong** return to Hong Kong from Taiwan in January 1990, **he** began to occupy...

(iii) **Source Text:** 英京貿易有限公司**股東之一**，

English Translation: **a director of one** Ying King Trading Co Ltd.

Comment: Firstly, the translation of “Director” is “董事”, while the correct English translation of “股東” should be “shareholder” rather than “director”. “Shareholder (股東)” is totally different from “Director (董事)”. Secondly, “a director of one” should best be replaced by “one of the directors of one”, which is more correct on its grammar.

Suggested Version: **one of the shareholders of one** Ying King Trading Co Ltd.

Paragraph 4

Source Text: 原審法官指申請人的代表律師並沒有提出修改**答辯人名字**的申請，

English Translation: The Presiding Officer said that he would not amend the **Respondent's** name...

Comment: Since there are more than one respondents, the plural form of “respondents” should be adopted, which means it should be written as Apostrophe S (rather than S Apostrophe) making it to Respondents’.

Suggested Version: The Presiding Officer said that he would not amend the **Respondents’** name...

Paragraph 6

(i) **Source Text:** 該建築物是受 《建築物管理條例》(以下簡稱《條例》) **管轄**。

English Translation: The Building falls within the **purview** of the Building Management Ordinance.

Comment: The translator has translated the word “管轄” to purview. However, the meaning of “purview” in the legal stance is “The body, scope or limit of a statute”, which is not exactly the same as the meaning of “管轄”. Therefore, the word “jurisdiction” is more appropriate than purview. Moreover, the plain language approach (such as: is governed by) is recommended.

Suggested Version: The Building falls within the **jurisdiction** of / **is governed by** the Building Management Ordinance (hereinafter “the Ordinance”).

(ii) **Source Text:** ...須由**法團**而非業主行使及執行。

English Translation: ...and performed by the **owners incorporation** to the exclusion of the owners.

Comment: The correct English translation of “法團” is “corporation”. The translation of “owners incorporation” is incorrect.

Suggested Version: ...and performed by the **corporation** to the exclusion of the owners.

Paragraph 9

- (i) *Source Text:* (以後簡稱“獨佔權”)

English Translation: (hereinafter “**the exclusive right**”)

Comment: The translation of “exclusive right” is unclear because “exclusive right” can refer to rights in many different aspects such as an exclusive right to televise the world cup and so on. In this judgment, the meaning of this term is to indicate that someone has the right to use, control and enjoy the rooftop. Therefore the legal term “the right to exclusive occupation” should be used in order to convey a clear and definite message.

Suggested Version: (hereinafter “**the right to exclusive occupation**”)

- (ii) *Source Text:* 公契第 2 附表同時載明該建築物的業主所獲分配的業權...

English Translation: Schedule 2 to the DMC specifies the shares allocated to the owners of the Building ...

Comment: During the English translation, the word of “同時” has not been translated. Therefore, this missing word “also” should be added on the sentence.

Suggested Version: Schedule 2 to the DMC **also** specifies the shares allocated to the owners of...

Paragraph 11

- (i) *Source Text:* Jumbo King Ltd 案例

English Translation: Jumbo King Ltd

Comment: The subject of this paragraph in the original Chinese judgment is “Jumbo King Ltd 案例”, but its English translation was “Jumbo King Ltd” only. It is apparent that the translation of the word “案例” (case) is missing when translating to English.

Suggested Version: Jumbo King Ltd **case**

- (ii) *Source Text:* 在一幢多層數的大廈，除非某一業主在該大廈內擁有共同業權，否則他不可以單獨管有該大廈的某一部份。

English Translation: In relation to a **multi-storey** building, there cannot be a proprietary right to the exclusive possession of part of the **building** except as an incident

of **common ownership** in the building.

Comment: On one hand, the correct legal terminology in English of “共同業權” should be “co-ownership” rather than common ownership. On the other hand, it has wrongly written on its “legal principle” when it is extracted from the judgment of Jumbo King Ltd v Faithful Properties Ltd [1999] HKCFA 38 and we would cite exactly the same when referring from the other case as reference.

Suggested Version: In relation to a **multi-storied** building, there cannot be a proprietary right to the exclusive possession of part of the building except as an incident of **co-ownership** in the **land and** building.”

Paragraph 12

(i) **Source Text:** 該案指出,...

English Translation: The above case **also** pointed out that...

Comment: The source text has never indicated “該案亦指出”, so why the word “also” was added in its English translation? The word “also” is needless and incorrect which makes it as a different meaning. Therefore, “also” should be deleted from the sentence.

Suggested Version: The above case pointed out that...

(ii) **Source Text:** 他是有權**同時**單獨管有這些未獲分配產權的部分。

English Translation: The owner is entitled to the exclusive possession of those parts.

Comment: It is apparent that the Chinese word “同時” has been missed during the English translation. The word “as well” should be added on the English translation.

Suggested Version: ...the owner is entitled to the exclusive possession of those parts **as well**.

Paragraph 13

Source Text: **反過來說**，如果他沒擁有任何不可分割的業權,...

English Translation: **On the other side of the coin**, where a person does not own any undivided share in a building,...

Comment: It would be somewhat controversially to discuss the translation of the phrase “反過來說”. The translator has translated this phrase to “On the other side of the coin”. The purpose of this sentence was saying a circumstance which was definitely different from what had been said/discussed on the previous circumstance (paragraph). At first glance, it seems

that there is no problem on its English translation “On the other side of the coin”. However, after thinking it carefully, its translation might not be definitely correct, because “On the other side of the coin” may explain as “On another viewpoint”, which means a different point or way of feeling or thinking for something, but not the definite different situation. In order to avoid such misunderstanding, translating it to “On the contrary” is more concise and accurate.

Suggested Version: **On the contrary**, where a person does not own any undivided share in a building,...

Paragraph 14

Source Text: 本案天台並未獲分配...

English Translation: The rooftop of the Building...

Comment: The word “本案” in Chinese was not translated yet in the English translation. Therefore, “In this case” should be added.

Suggested Version: **In this case**, the rooftop...

Paragraph 15

Source Text: ...因此天台最遲在 2000 年亦是公用部份。

English Translation: It follows that the rooftop had become a common part of the Building **latest by** 2000.

Comment: The correct translation of “最遲” should be “at the latest”.

Suggested Version: It follows that the rooftop had become a common part of the Building by 2000 **at the latest**.

Paragraph 18

Source Text: 第 34I 條所述的“任何人”是指受該建築物...

English Translation: in section 34I **referred** to the person bound by the DMC;

Comment: The word “referred” is preferred to write as either “refers” or “is referred”, which is more grammatically correct.

Suggested Version: in section 34I **is referred** to the person bound by the DMC;

Paragraph 19

- (i) **Source Text:** 法例賦予業主立案法團管理建築物的.....即立案法團不可以對.....那麼便與其法律賦予立案法團管理公司...

English Translation: The Ordinance empowers an **owners incorporation** to manage the common parts,.....that the **incorporation** would not be able.....the legislative intent of empowering the **incorporation** to manage the common parts.

Comment: As already mentioned in the previous paragraphs, according to Section 7 of the Building Management Ordinance Cap.344, incorporation means “法團的成立” rather than “業主立案法團／立案法團”. Therefore, the correct English translation of “業主立案法團／立案法團” should be “The Incorporated Owners”.

Suggested Version: The Ordinance empowers **incorporated owners** to manage the common parts,.....that the **incorporated owners** would not be able.....the legislative intent of empowering the **incorporated owners** to manage the common parts.

- (ii) **Source Text:** ...因為他們不是受大廈公契約束的人，...

English Translation: ...because they were not bound by the **deed of mutual covenant**.

Comment: It seems that there is nothing wrong with the translation of this sentence. However, it has been mentioned on paragraph 9 that the short form of “the DMC” should be written thereafter whenever there is the phrase of “Deed of Mutual Covenant” occurs in the judgment. Therefore, it should be consistent by writing the same way throughout the whole judgment.

Suggested Version: ...because they were not bound by the **DMC**.

Paragraph 20

- (i) **Source Text:** 這條文的意思亦是**非常簡單清楚**。

English Translation: The meaning of this provision **cannot be simpler and clearer**.

Comment: Although there is nothing wrong with its English translation, nevertheless, it is rather clumsy. In my opinion, I would re-translate the phrase “cannot be simpler and clearer” to “is simple and clear”, which is more simple, plain and understandable to the reader.

Suggested Version: The meaning of this provision is **simple and clear**.

(ii) **Source Text:** 任何一個人就算本來是不受建築物公契約束的,

English Translation: ...even if that person is **initially** not bound by it.

Comment: According to the Oxford Dictionary, the meaning of the word “initially” is “in the initial stages, i.e. at the beginning, of something (某東西的始創階段)” while the meaning of “originally” is “本來、起先、原先、原作、原創”, so there is discrepancy with the actual meaning of “本來”. Therefore, the word “本來” should be translated to “**originally**” rather than “initially”.

Suggested Version: ...even if that person is **originally** not bound by it.

Paragraph 21

Source Text: 雖然引用 34 I 條的條件是有公契的存在，但這不表示第 34 I 條所指的“任何人”是局限於受公契約束的人。

English Translation: Although the existence of a deed of mutual covenant is a **pre-condition** to the application of section 34I, this does not mean that the word “person” under that section is to be **confined** to a person bound by **a deed of mutual covenant**.

Comment: Firstly, “條件” was translated to “pre-condition”. However, “pre-condition” carries the meaning of “something must come before or is necessary to a subsequent result”, which was used improperly. It is more appropriate to translate it to “condition”.

Secondly, “confine” in legal English means “禁閉”, which was inappropriate although it carries the meaning of restrain or control. It is more suitable to translate it to “limit” which refers to those limited persons who are bounded by the DMC.

Thirdly, the same problem as indicated in paragraph 19, it has been mentioned in paragraph 9 that the short form of “the DMC” should be used consistently thereafter wherever there is the phrase of “Deed of Mutual Covenant”.

Suggested Version: Although the existence of a deed of mutual covenant is a **condition** to the application of section 34I, this does not mean that the word “person” under that section is to be **limited** to a person bound by **the DMC**.

Paragraph 23

Source Text: ...申請人亦可引用普通法的侵權訴因...

English Translation: ...the Applicants may rely on the common law of tort as their cause of action...

Comment: The word “亦” was missing during the English translation. Therefore, “also” should be added on it.

Suggested Version: ...the Applicants may **also** rely on the common law of tort as their cause of action...

Paragraph 26

(i) **Source Text:** 原審法官在 2001 年 6 月 12 日**判案書**內指，

English Translation: In his **Ruling** of 12 June 2001, the Presiding Officer...

Comment: As already explained in paragraph 3, “判案書” should be translated as “Judgment” rather than “Ruling”. Also, it should be consistent with the words translated in the previous paragraphs.

Suggested Version: In his **Judgment** of 12 June 2001, the Presiding Officer...

(ii) **Source Text:** 根據《條例》**第 VI A 部**的第 34C(2)條，如 VIA 部與**公契或任何其他協議**的條款有不一致之處，即以 VI A 部為準。

English Translation: Section 34C(2) of the Ordinance provides that, in the event of any inconsistency between Part VIA of the Ordinance and the terms of a **deed of mutual covenant**, the former shall prevail.

Comment: Firstly, the phrases of “第 VI A 部” and “或任何其他協議” have been missed in the English translation. Secondly, the same problem as indicated in paragraph 19, it has been mentioned on paragraph 9 that the short form of “the DMC” should be used consistently thereafter wherever there is the phrase of “Deed of Mutual Covenant”.

Suggested Version: Section 34C(2) **under Part VIA** of the Ordinance provides that, in the event of any inconsistency between Part VIA of the Ordinance and the terms of a **DMC or any other agreements**, the former shall prevail.

Paragraph 27

Source Text:

1. 發出**強制令命令**答辯人:
2. 答辯人**須於**...
3. 答辯人**需要**...
4. 暫准**命令**本上訴及...

English Translation:

1. (a) that the Respondents **are to** demolish the unauthorized structure...
(b) that the Respondents **are to** stop dumping litter...
2. ...the Respondents **are to** demolish the unauthorized structure...
3. ...That the Respondents **are to** pay compensation to the Applicants...

4. ...An order nisi that the Respondents **are to** pay the Applicants' costs...

Comment: "Shall" has mandatory effect. It has the meaning of "應當, 必須, 須得, 要"etc. expressing an instruction of command, and is commonly used in the court order.

Suggested Version:

1. (a) that the Respondents **shall** demolish the unauthorized structure...
(b) that the Respondents **shall** stop dumping litter...
2. ...the Respondents **shall** demolish the unauthorized structure...
3. ...That the Respondents **shall** pay compensation to the Applicants...
4. ...An order nisi that the Respondents **shall** pay the Applicants' costs...

Conclusion

It is surprised that so many errors are found in the translation of the judgment. Some of them are simple or careless mistakes which could have definitely been avoided if vetting had been conducted thoroughly before it was posted on the judiciary website. Also, this brings some issues: who is qualified to translate a judgment? Who is the person finally approve the translation of a judgment? Without a qualified legal translator, a legal case may probably be translated wrongly and subsequently be misunderstood. This would certainly distort the development of common law and legal bilingualism.