

BOOK REVIEW

CRIMINAL LAW IN SINGAPORE AND MALAYSIA TEXT AND MATERIALS

BY

K.L. KOH, C.M.V., CLARKSON AND N.A. MORGAN
(Malayan Law Journal Pte.
Ltd, 1989 xlviii-641 pp.)
- Hardback MRgt. 225/-

This is unquestionably a much needed book with a fairly extensive collection of comments and analysis spread over twenty-eight chapters. Unfortunately the Malaysian Penal Code which was amended in 1989 with major changes in law in respect of sections 91, 312, 292, 293, 354, 375, 376, 377, 377A, 377B, 377C, 377D, 377E, 379, 379A, 380, 384-387, 388, 389, 406-408, 411, 414, 417-420, 421-424 and 509 were not updated in the book, because the authors intended to state the law at a particular "cut-off" date which is, 14 June 1988.

In Chapter II, the concept of punishment is dealt with in a summary and succinct manner. Since this book does not set out to be a penology text, the authors have given the reader sufficient materials for thought.

In Chapter III, there are some typographical errors, at page 49 para 2, "by" should read as "be"; page 52 para 1, "rather that" should read as "rather than".

General Exceptions are covered rather comprehensively in Chapter IV. However, for the Malaysian position the following presentation and discussion would have been beneficial:

- (a) the source(s) of the law and some examples,
- (b) the function of the General Exceptions, meaning of balance of probabilities, purpose of section 105 of the Evidence Act; meaning of "nothing is an offence ...", an explanation of the burden of proof, legal and evidential burden of proof in the case of the general exception of accident,

- (c) the role played by sections 40 and 6 of the Penal Code,
- (d) the relevance of distinguishing the general exceptions into excuses and justifications under the Penal Code and under the English Criminal Law. This would be especially significant because there are differing views between the role of general exceptions under chapter IV of the Penal Code and in respect of all offences under the Code and that of the special defence to murder under section 300,
- (e) case law, for instance
 - (i) *Lim Ah Tong v PP* [1948-49] Supp MLJ 158.
 - (ii) *PP v Chin Kiang Yin* [1956] MLJ 217.

Lim Ah Tong v PP was an appeal against the conviction of the appellant for being in possession of a revolver, an offence punishable under regulation 4(1)(a) of the Emergency Regulations 1948. Inter alia, the Court drew attention to the remark in the summing up of the learned trial judge to the effect that section 94 of the Penal Code does not apply to an offence under the Emergency Regulations. This is not correct since section 40 of the Penal Code lays down that in Chapter IV of the Code, which is the chapter relating to General Exceptions and includes section 94, the word "offence" denotes a thing punishable under the Code or under any other law for the time being in force. Therefore, all the General Exceptions apply to offences under the Emergency Regulations.

In *Public Prosecutor v Chin Kiang Yin*, the court observed that sections 76 to 106 of the Penal Code make it clear that although the chapter is headed "General Exceptions" the word "exception" is not to be read as synonymous with the word "excuse", and that the sections declare no offence is committed in circumstances contemplated by them. *Lim Ah Tong* was followed.

In Chapter VI, the relevance of consent of the patient to current modes of treatment for psychiatric (as well as other) types of diagnosis practised in Singapore and Malaysian hospitals could have been dealt with.

Section 91 of the Malaysian Penal Code was amended in 1989 (Am. Act 727/89). Similarly, section 312 was amended to provide thus,

Whoever voluntarily causes a woman with child to miscarry shall, be punished with imprisonment for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation - A woman who causes herself to miscarry is within the meaning of this section.

Exception - This section does not extend to a medical practitioner registered under the Medical Act 1971 who terminates the pregnancy of a woman if such medical practitioner is of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the mental or physical health of the pregnant woman, greater than if the pregnancy were terminated.

Section 312 of the Code does not apply to cases where a registered medical practitioner may terminate a pregnancy, not only for the purpose of saving life but also in cases where the continuance of the pregnancy would involve injury to the mental or physical health of the pregnant woman.

Under Chapter VIII entitled "Superior Orders" a discussion on what amounts to a lawful and an unlawful order, what are reasonable grounds and the meaning of "manifestly illegal" would have been useful in the context. Equally useful would have been a comment on the litmus test which a junior/inferior officer could apply to test the command of his superior as lawful or unlawful.

In Chapter IX, the author's summary on the difference between the cases of *Lim Chin Aik* [1963] AC 160 and *Khoo Cheh Yew* [1980] 2 MLJ 235 seems vague. The author states thus at p. 178 last paragraph:

... The Privy Council in *Lim Chin Aik* (1963) in an appeal from Singapore, was of the view, obiter, that the maxim, ignorance of the law is no excuse, was not applicable where there was no provision designed to enable a man by appropriate enquiry to find out what the law was. Thus the Privy Council recognized the maxim as applicable in Singapore and made an exception to it. It is submitted that the Privy Council quite rightly, did not make any reference to section 79 as it fell outside its scope. This approach is contrasted with the *Khoo Cheh Yew* (1980) approach in Malaysia.

With regard to the above paragraph the reviewer is not quite sure if the author - (1) agrees with S Yeo on both *Lim Chin Aik*, and on *Khoo Cheh Yew* or (2) disagrees with S Yeo on both *Lim Chin Aik* and *Khoo Cheh Yew* or (3) agrees with S Yeo on one but not on the other, since it also states that S. Yeo is of the view that the Courts in *Lim Chin Aik* and *Koo Cheh Yew* were wrong in adopting the exception to the maxim "ignorantia juris non exusat".

As the textbook deals with the English aspects of criminal law as well, perhaps the defence of accident under English and local law could have been highlighted in Chapter X. Questions like where and how would the legal and evidential burden of proof lie could have been considered; since this is essentially a Criminal Law Text, it is suggested here that basic general aspects of burden of proof need be included.

Since the case of *Teo Heng Chye* [1989] 3 MLJ 205 was not reported at the time the book was written this case was not discussed under Intoxication: section 86(2) in Chapter XIII. *Teo Heng Chye* is a Singapore decision. It states that in a case of self induced intoxication, the level of intoxication was sufficient to warrant it being taken into account for the purpose of determining whether the accused had intention specific or otherwise. The court gave the accused the benefit of the doubt. It held that the actions of the accused were done with the knowledge that they are likely to cause death. Therefore, he was guilty of culpable homicide not amounting to murder and not murder.

"It is clear that there can be no liability for attempting the physically impossible." This statement at page 282 of Chapter XIV on Attempt should have been qualified. For, at page 289 the authors, state "However, as seen above, two recent local cases have departed from this view and held that there can be liability for impossibility due to ineptitude. It is likely that this will be the approach adopted in Singapore and Malaysia - and support can be found in the Indian authorities." It is also worthwhile for the author to have mentioned that the "two recent local cases" referred to on pg. 289 refer to *PP v Zainal Abidin b Ismail* [1987] 2 MLJ 741 Brunei and *Oi Bee Kee v PP* (1983) (unreported - Magistrate's Appeal No. 175 of 1983, Subordinate Courts,

Singapore). Chapter XXI entitled Homicide by Negligence in the Malaysian context must be read subject to the Road Transport (Amendment) Act 1988.

In Chapter XX, on special exceptions, the authors have rightfully highlighted the case of *AG for Ceylon v Don John Perera* [1953] AC 200 (PC Appeal from Ceylon) which has received approval in the Malaysian case of *Loo Geok Hong v PP* [1961] MLJ 157.

For a fuller discussion of the subject matter of provocation and sudden fight other cases that could have been discussed include *Dharman v State of Punjab* [1957] Cr LJ 420, at pp. 421-422 and *Berahim v PP* [1968] 1 MLJ 298.

Further, in Chapter XX when dealing with the subject of diminished responsibility which does not exist under Malaysian law it would have been very useful if the authors had evaluated this defence in the light of Singapore's experience and given their recommendations as to the necessity for incorporating such a defence in the Malaysian Penal Code.

Viewed as a whole however, this book is comprehensive. It contains some useful comparative materials, particularly in Chapters XVIII and XIX on causation, culpable homicide and murder, respectively. It highlights a number of gray areas and lacunae in the law and introduces the reader to a consideration of possible avenues of dealing with hitherto unsolved questions.

I would recommend this book to both law students and legal practitioners alike as a necessary reading in criminal law.

Mary George*

*Lecturer,
Faculty of Law,
University of Malaya.

