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14. CRIMINAL LAW[1]

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I. Introduction

14.1 This review is in three parts. These will examine cases involving offences under the Penal Code,[2] the Misuse of Drugs Act[3] ("MDA"), and other statutes respectively.

II. Offences under the Penal Code

A. Cheating a corporate body

14.2 In *Leck Kim Koon v Public Prosecutor*,[4] the General Division of the High Court discussed how the elements of the offence of cheating apply where the victim is a corporate body.

14.3 The appellant ("Leck") was a director and majority shareholder of a company ("Intraluck") in the business of importing and exporting aluminium and other products. Intraluck had trade financing credit facilities with banks, under which it could obtain financing upon submitting an application form together with transport documents.

1 Any views expressed in this chapter are the authors' own views, and do not represent the views of the Attorney-General's Chambers or the Supreme Court of Singapore.
2 Cap 224, 2008 Rev Ed.
3 Cap 185, 2008 Rev Ed.
4 [2021] SGHC 236.

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14.4 In 2015, Intraluck submitted six applications for invoice financing to various banks, which attached either a bill of lading or an arrival notice referencing the bill of lading. The bill of lading was the subject of an earlier import transaction, for which Intraluck had already received invoice financing. The banks approved the applications and disbursed moneys to the suppliers under the relevant invoices.

14.5 Leck was charged with six counts of cheating and dishonestly inducing delivery of property under s 420 of the Penal Code. He claimed trial to the charges. The District Court convicted Leck on all six charges and sentenced him to 36 months' imprisonment. Leck appealed against his conviction and sentence.

14.6 On appeal, Vincent Hoong J discussed how the elements of the offence of cheating apply where the victim is a corporate body. Hoong J first affirmed the elements of the offence under s 420 of the Penal Code set out in *Gunasegeran s/o Pavadaisamy v Public Prosecutor*,[5] namely:[6]

> (a) Deception must have been practiced on the victim;
>
> (b) There was inducement such that the victim delivered any property to any person; and
>
> (c) There must be a dishonest or fraudulent intention on the part of the deceiving person to induce the victim to deliver the property.

14.7 Regarding the first element (deception of the victim), Hoong J held as follows:

(a) A corporate entity could be the victim of cheating even if no human agent was deceived: s 11 of the Penal Code defines the word "person" (used in the definition of "cheating" in s 415 of the Penal Code) to include "any company or association or body of persons, whether incorporated or not". Hoong J added that his view was reinforced by Explanation 4 to s 415 of the Penal Code (added to the Penal Code in 2019, after the offences in question were committed). Explanation 4 provides that a corporate body can be deceived even though none of its officers, employees or agents was personally deceived.[7]

(b) In the context of deceiving a corporate body, where no particular human agent of the corporate body was deceived, to prove that the corporate body had "believed" the deception, the Prosecution had to show that the offender's acts were such as

5 [1997] 2 SLR(R) 946.

6 *Leck Kim Koon v Public Prosecutor* [2021] SGHC 236 at [24].

7 *Leck Kim Koon v Public Prosecutor* [2021] SGHC 236 at [25]–[26].

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to induce an action on the part of the corporate body, either as part of its internal protocol or management processes, and the corporate body would not have so acted if the "representation" was not made.[8]

14.8 Regarding the second element (inducement), Hoong J endorsed the holding in *Seaward III Frederick Oliver v Public Prosecutor*[9] that it was not necessary for the deception to be the sole, operative reason for the action, so long as it played some part in inducing the action.[10]

14.9 On the facts, the banks had been deceived into believing that the moneys to be disbursed under the relevant invoices related to genuine trade transactions, which did not in fact exist.[11] The deception had induced the banks to disburse the moneys.[12] Further, the appellant had acted dishonestly, since he knew that the banks required copies of transport documents relating to genuine trade transactions to disburse funds under the facilities, and had submitted documents which were false representations of such trade transactions to the banks.[13] Thus, all the elements of the offence of cheating and dishonestly inducing delivery of property were made out. Hoong J accordingly dismissed the appeal against conviction, and also dismissed the appeal against sentence.

B. Defence of consent under section 87 of the Penal Code

14.10 In *Public Prosecutor v Chong Chee Boon Kenneth*,[14] the General Division of the High Court considered, among other things, the contours of the defence under s 87 of the Penal Code.

14.11 The proceedings arose from the death of a National Service serviceman ("Cpl Kok") during a ragging activity. A group of fellow servicemen had carried Cpl Kok to a 12-metre-deep pump well and pressured him to enter the well despite his pleas to be spared. One of the servicemen suddenly pushed Cpl Kok from behind into the pump well. Cpl Kok, who was not a swimmer, drowned as a result.

14.12 Two of Cpl Kok's commanding officers ("Lta Chong" and "SWO Nazhan") were charged in their roles as the commander and

8 *Leck Kim Koon v Public Prosecutor* [2021] SGHC 236 at [26] and [28].
9 [1994] 3 SLR(R) 89 at [28].
10 *Leck Kim Koon v Public Prosecutor* [2021] SGHC 236 at [31].
11 *Leck Kim Koon v Public Prosecutor* [2021] SGHC 236 at [30].
12 *Leck Kim Koon v Public Prosecutor* [2021] SGHC 236 at [31].
13 *Leck Kim Koon v Public Prosecutor* [2021] SGHC 236 at [39].
14 [2021] 5 SLR 1434.

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deputy commander respectively in charge of the servicemen for having abetted by intentionally aiding the servicemen to commit an offence of causing grievous hurt to Cpl Kok by doing a rash act which endangered human life under s 338(*a*) of the Penal Code. The District Court acquitted Lta Chong and SWO Nazhan of the s 338(*a*) offences but convicted them on amended charges under s 336(*b*) of the Penal Code. The Prosecution appealed against the acquittals on the s 338(*a*) charges, while SWO Nazhan appealed against his conviction and sentence on the amended charge.

14.13 One of SWO Nazhan's arguments on appeal was that Cpl Kok had voluntarily placed himself in the potentially dangerous situation and consented to the activity, and that the harm occasioned to him accordingly fell under the exception in s 87 of the Penal Code.

14.14 See Kee Oon J referred to the Court of Appeal's remarks in *Pram Nair v Public Prosecutor*[15] regarding the concept of consent in the context of sexual offences. In See J's view, the essential elements of valid consent were fundamentally similar in the context of both sexual and non-sexual offences. With the exception of the offence of murder (for which consent could only provide a partial defence under Exception 5 to s 300 of the Penal Code), the following threshold requirements should minimally be satisfied in order for consent to operate as a complete defence:[16]

(a) There must be voluntary participation on the part of the "victim" after he/she had been able to appreciate the significance and the moral quality of the act proposed to be done.

(b) There must be some element of agreement as to what was proposed to be done to the "victim". Such an agreement could be implied or express, and its existence was a question of fact. There was no need for any conventional contractual analysis. What was important was that the "victim" must know the nature of the act proposed to be done and the reasonably foreseeable consequences of the act.

(c) There must not be any fact which called into question whether consent was given voluntarily. The presence of any of the vitiating factors in s 90 of the Penal Code would be *prima facie* evidence of a lack of voluntariness. Such factors included the giving of consent under fear of injury (s 90(*a*)(i)), where "injury" encompassed any harm illegally caused to any person in body, mind, reputation or property.

15 [2017] 2 SLR 1015.
16 *Public Prosecutor v Chong Chee Boon Kenneth* [2021] 5 SLR 1434 at [39]–[40].

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14.15 Applying these principles to the facts, See J found that the general defence of consent did not apply for two reasons. First, Cpl Kok had not been allowed to exercise his own free will. Cpl Kok was constantly surrounded by up to as many as eight to ten other servicemen, including superior officers, who were intent on making sure that he entered the pump well and harassed and pressured him to comply. Cpl Kok repeatedly pleaded with his superior officers but was ignored. Even if Cpl Kok's consent was not completely vitiated, he would at least have been acting under overwhelming duress. He was placed squarely in a situation of helpless resignation in the face of inevitable compulsion, which could not be deemed consent.[17]

14.16 Second, pursuant to s 90(*a*) of the Penal Code, the defence of consent was not available if the accused person knew or ought to have known that any purported consent was obtained due to fear of injury. This was an objective inquiry. On the facts, Cpl Kok never expressly or impliedly consented to entering the pump well. SWO Nazhan and Lta Chong knew or ought to have known that, even if Cpl Kok had entered the pump well on his own, there was no valid consent on his part to speak of in the circumstances.[18]

14.17 See J thus dismissed SWO Nazhan's appeal. He further allowed the Prosecution's appeals, convicted both SWO Nazhan and Lta Chong on the charges under s 338(*a*) of the Penal Code as originally framed, and enhanced their sentences to ten and 11 months' imprisonment respectively.

C. Elements of section 182 of the Penal Code – Furnishing false information

14.18 In *Public Prosecutor v Chua Wen Hao*,[19] the General Division of the High Court considered, among other things, the elements of s 182 of the Penal Code, a provision criminalising giving false information to a public servant with intent to cause the public servant to do something which he ought not to do or to omit something which he ought to do if the true state of facts were known to him.

14.19 In the trial court, the accused person pleaded guilty to a charge under s 182 for giving false information to a police officer and was sentenced to a short detention order ("SDO"). The facts were as follows. The accused person and a lady, together with a male subject ("B1"), entered a hotel room. Angered as a result of a dispute with a

17 *Public Prosecutor v Chong Chee Boon Kenneth* [2021] 5 SLR 1434 at [41]–[49].
18 *Public Prosecutor v Chong Chee Boon Kenneth* [2021] 5 SLR 1434 at [50].
19 [2021] 4 SLR 766.

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hotel employee about room occupancy capacity, B1 set fire to the hotel's towels placed at the rear of the hotel. When the police attended to the scene, the accused person told the investigation officer that he did not know the male subject who had entered the hotel room with him and had not allowed the subject to enter the room, knowing this information to be false. The police subsequently uncovered the identity of B1 after five police officers spent a total of 21.9 man-hours in investigations. The accused person recanted his statement only after B1's identity had been uncovered by the police.

14.20 The Prosecution appealed against the SDO sentence on the basis that a sentence of at least two weeks' imprisonment was warranted. The Defence appealed against the SDO sentence, submitting for either a fine or a conditional discharge. The Defence also argued that the charge under s 182 of the Penal Code could not be made out in the first place because the accused person had not intended or known that his false information would likely cause the police officer to misuse his lawful powers or act in breach of his duties as a public servant.[20] The appellate court exercised its power under s 390(3) of the Criminal Procedural Code[21] ("CPC") to review the conviction of the accused person.

14.21 Sundaresh Menon CJ held that to establish an offence under s 182 of the Penal Code, the Prosecution must show that:[22]

> (a) the accused person gave information to a public servant; (b) such information was false; (c) the accused person knew or believed that such information was false; and (d) the accused person intended thereby to cause, or knew it to be likely that he or she would thereby cause, the public servant to: (i) use his or her lawful powers to the injury or annoyance of another person; or (ii) do something which he or she ought not to do if the true state of facts were known to him or her; or (iii) omit to do something which he or she ought not to omit if the true state of facts were known to him or her.

14.22 Menon CJ went on to explain that s 182 of the Penal Code is not concerned with simply any false statement, nor with simply any effect caused by a false statement. The making of a false statement or the furnishing of false information is a necessary but insufficient predicate. Section 182 is concerned with "the situation where a public servant *abuses, misuses or improperly withholds the use of his or her lawful powers* as a result of a false statement made to him or her" [emphasis in original].[23] Lawful powers are those conferred by the law and to be

20 *Public Prosecutor v Chua Wen Hao* [2021] 4 SLR 766 at [14].
21 Cap 68, 2012 Rev Ed.
22 *Public Prosecutor v Chua Wen Hao* [2021] 4 SLR 766 at [19].
23 *Public Prosecutor v Chua Wen Hao* [2021] 4 SLR 766 at [20].

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exercised in conformity with the purposes of the law. Thus, s 182 targets the situation where the deployment of these powers or the omission to deploy these powers is for purposes other than the purposes for which they have been conferred.

14.23 Section 182 of the Penal Code carries a normative element: it is designed to safeguard the public from the *improper* exercise of lawful powers or the *improper* omission to exercise lawful powers by a public servant. There is a clear distinction between (a) powers that the public servant *ought not* to have exercised; and (b) powers that he *would not or might not* have had to exercise, that is, powers that he was entitled or obliged to exercise, but exercised in a manner which entailed or might have entailed greater expense and/or which was or might have been more extensive than what would otherwise have been the case.[24] In other words, the distinction is between (a) the *misuse*; and (b) the *inefficient* use of lawful powers. Section 182 only applies to the former scenario.

14.24 In contrast, s 177 of the Penal Code deals with the less serious offence of furnishing false information to a public servant without more.[25] All that is required to make out this offence is that a person who is legally bound to furnish information to a public servant furnishes information that he or she knows or believes to be false.

14.25 On the facts, there was no question that the police were exercising their lawful powers in carrying out their investigations into the identity of B1.[26] There was no misuse of powers. The police would have had to investigate the case regardless of whether the accused person provided any false information. The false information provided by the accused person merely led to an inefficient use of lawful powers by the police.

14.26 The Prosecution decided to amend the charge in the course of the appeal to s 177 of the Penal Code, and the accused person pleaded guilty to it. He was convicted and sentenced on the amended charge to a fine of $2,500.

D. Elements of section 405 of the Penal Code – Criminal breach of trust

14.27 In *Raj Kumar s/o Brisa Besnath v Public Prosecutor*,[27] the General Division of the High Court held that, for an offence of criminal breach

24 *Public Prosecutor v Chua Wen Hao* [2021] 4 SLR 766 at [20] and [23].
25 *Public Prosecutor v Chua Wen Hao* [2021] 4 SLR 766 at [21].
26 *Public Prosecutor v Chua Wen Hao* [2021] 4 SLR 766 at [21].
27 [2021] 4 SLR 676.

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of trust to be made out, it was not necessary to prove (a) the true identity of the party entrusting the offender with the property in question ("the entrusting party"); or (b) that the offending party had legal ownership of the property entrusted.

14.28 Through an online platform, the appellant had come across a persona called "Maria Lloyd" ("Maria"), whose actual identity was unknown. The appellant agreed to receive $89,000 on Maria's behalf in Singapore and hand it over to a man in Malaysia. The appellant subsequently collected $81,000 from a lady in Singapore but pocketed it for himself instead of bringing it to Malaysia as instructed by Maria. The appellant was convicted of an offence of criminal breach of trust and sentenced to 13 months' imprisonment. He appealed against his conviction and sentence.

14.29 On appeal, the first issue was whether the identity of the entrusting party had to be established for the offence to be made out. The appellant contended that there could be no "entrustment" under s 405 of the Penal Code unless the relationship of trust was legitimate or genuine. The appellant asserted that Maria was a fictional character invented to deceive and defraud persons including himself. He contended that, where a trust relationship was created as a result of the entrusting party's fraud and deceit, no valid or legally recognisable trust relationship was created.

14.30 Vincent Hoong J approached this issue as a matter of statutory interpretation of the word "entrusted" in s 405 of the Penal Code.[28] Hoong J held that the identity of the entrusting party need not be proved for the following reasons:

(a) The appellant's interpretation did not comport with the plain language of s 405, which did not make the identity of the entrusting party an element of the offence. Moreover, the words "in any manner" preceding the word "entrusted" supported a wide reading of entrustment.[29]

(b) The appellant's interpretation stifled, rather than promoted, the object of s 405 of the Penal Code. Based on the text of s 405 as well as extraneous material on its legislative history and background, the specific purpose of s 405 was to criminalise the dishonest abuse of trust reposed in a person in

28 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [22] and [24]–[27].

29 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [41].

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relation to property.[30] A person could be entrusted with property within the meaning of s 405 even if he was deceived as to the true identity of the entrusting party. Such deception did not render the terms of the entrustment, or the offender's knowledge of such terms, imaginary or fictitious. The fact that the offender was misled about the identity of the entrusting party did not preclude a finding that the offender had acted dishonestly in dealing with the property, which was the very mischief s 405 legislated against.[31]

(c) Hoong J's view was supported by the weight of authority. In *Pittis Stavros v Public Prosecutor*,[32] the High Court had convicted the offender of criminal breach of trust after removing the identity of the entrusting party from the charge. This showed that such identity was not an element of the offence. This view was also consistent with Indian academic commentary and case law.[33]

14.31 Hoong J rejected three of the appellant's arguments to the contrary, as follows:

(a) The appellant contended that the converse view led to the absurd result that the law validated the trustor's fraud. Hoong J rejected this view. Depending on the precise circumstances, the agreement between the entrusting party and the accused person could be vitiated for a host of reasons, such as misrepresentation or illegality. Punishing the accused person's dishonest breach of trust did not *ipso facto* mean that the entrusting party's fraud was validated.[34]

(b) The appellant also pointed out that the illustrations to s 405 all involved legally recognisable relationships and did not involve trusts created as a result of a trustor's fraud or deceit. However, Hoong J observed that illustrations are not exhaustive of a provision's scope of operation, and that the plain language and object of s 405 should have primacy.[35]

(c) Hoong J likewise rejected the appellant's suggestion that the civil law principle of *consensus ad idem* should be imported in this case. The authorities cited by the appellant did not support

30 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [28], [29], [32], [35] and [36].
31 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [42]–[44].
32 [2015] 3 SLR 181.
33 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [53].
34 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [46].
35 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [54] and [55].

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this proposition.[36] Moreover, the charge as framed did not require the court to decide whether a valid and binding contract had been formed between the appellant and the entrusting party. The charge had not been framed in terms of the accused person dishonestly using or disposing of the entrusted property in violation of "any legal contract, express or implied, which he has made touching the discharge of such trust", which was a different limb of s 405 of the Penal Code.[37]

14.32 The second issue was whether, for an offence under s 405 to be made out, it had to be proved that the entrusting party was the legal owner of the property. Applying *Pittis Stavros v Public Prosecutor*,[38] Hoong J held that the entrusting party need not legally own the property, so long as he had *some* right to the property, including a bare possessory right.[39]

14.33 Hoong J thus held that entrustment was established if the offender received possession of the property with the knowledge that (a) the entrusting party had, at least, possessory rights to the property; and (b) he was to deal with the property in the manner instructed by the entrusting party.[40] This being the case on the facts, the appellant's conviction and sentence were upheld.[41]

E. Elements of section 204A of the Penal Code – Obstructing the course of justice

14.34 In *Rajendran s/o Nagarethinam v Public Prosecutor*,[42] the General Division of the High Court held that an accused person could be guilty of obstructing the course of justice under s 204A of the Penal Code by impeding investigations even if he/she did not know the specific offence(s) that had been committed.

14.35 The appellants ran an entertainment club, assisted by a Bangladeshi man named "Roky". The appellants employed female performing artistes to dance and entertain the club's customers, and they also pressured some of the female artistes to provide sexual services to customers. One day, four of the female artistes fled the apartment where they were housed and subsequently lodged a police report. On realising

36 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [57]–[61].
37 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [56].
38 [2015] 3 SLR 181.
39 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [67].
40 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [42].
41 *Raj Kumar s/o Brisa Besnath v Public Prosecutor* [2021] 4 SLR 676 at [62]–[65], [68] and [72].
42 [2021] SGHC 200.

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that the artistes had run away, the appellants told Roky to leave Singapore, as they feared that Roky would be called up or arrested for investigations and would incriminate them. The appellants arranged for Roky to go to Malaysia immediately and instructed him to return to Bangladesh from there, which he did.

14.36 The appellants were each charged, amongst others, with an offence under s 204A read with s 34 of the Penal Code for intentionally obstructing the course of justice by arranging for Roky to leave Singapore in order to evade arrest. They were each convicted and sentenced on this charge to eight months' imprisonment. They appealed against their convictions and sentences.

14.37 On appeal, the appellants contended that for a s 204A offence to be made out, the accused person must know the predicate offence(s) that had been committed, the investigation of which he impeded. The appellants claimed that, at the point when they instructed Roky to leave for Malaysia and then from there to Bangladesh, they were as yet unaware of the specific offences that they might have committed.

14.38 Tay Yong Kwang JCA rejected this view. Section 204A did not state that an accused person must know the particular charge(s) that might be brought against him or anyone else before he could be guilty of the offence. Rather, the offence was made out if an accused person was aware or had reason to believe that some wrongdoing might have been committed, whether by himself or some other person(s), and consequently took steps to thwart or prevent an investigation into or the prosecution of the wrongdoing. The accused person need only be aware of facts that might amount to wrongdoing, and need not know the charges that might be preferred or the legal consequences that could flow from those facts.[43]

14.39 Tay JCA further expanded on these principles through several illustrations:

(a) During investigations, holding charges might be preferred against an accused person. As investigations progressed, these charges might be altered or added to. If the appellants' contention was correct, then a person who hindered investigations by causing a potential witness to disappear – such that the police could not even obtain the preliminary information it needed to proceed further – would not be guilty under s 204A,

43 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [83]–[84].

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since he would not be able to predict the specific charges arising from the investigations. This outcome could not be correct.[44]

(b) The person impeding investigations might not have first-hand knowledge of the offence(s) committed. For example, person A might tell his friend, B, that the police was looking for A and A needed to get out of the jurisdiction to avoid arrest. Without knowing why the police was looking for A, B arranged for A to leave Singapore. It would seem contrary to reason to say that B was not guilty of an offence under s 204A simply because B was unaware of what offence A had committed.[45]

(c) In the above scenario, say A was subsequently apprehended, tried and acquitted of the offences he was charged with. This outcome would not affect B's culpability for the s 204A offence because the "course of justice" did not mean that there must be a conviction for the predicate offence. The investigations against A were themselves part of the course of justice, which had been obstructed by B aiding A's departure from Singapore.[46]

14.40 That said, if a person accused of a s 204A offence was in fact aware of the predicate offence at the time of his actions, and the predicate offence was a serious one, this could be an aggravating factor in sentencing (though such knowledge was not an element of the charge).[47]

14.41 On the evidence, Tay JCA concluded that the s 204A offences were made out. The appellants had instructed Roky to leave Singapore quickly due to the sudden disappearance of the performing artistes. The appellants were obviously concerned that if Roky were questioned or arrested by the police, he would reveal that the appellants had asked the performing artistes to provide sexual services. The appellants were obviously aware that demanding their employees to prostitute themselves was wrongful, even if they did not know the precise offences this would amount to in law. Tay JCA thus upheld the appellants' convictions and sentences on the s 204A charges.[48]

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44 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [85].
45 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [86].
46 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [87].
47 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [88]–[89].
48 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [92], [93], [115] and [121].

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III. Offences under the Misuse of Drugs Act

A. Test for whether the (intended) return of drugs to a "bailor" is trafficking

14.42 In *Roshdi bin Abdullah Altway v Public Prosecutor*,[49] the Court of Appeal considered, among other things, the test for whether the (intended) return of drugs to a "bailor" constitutes trafficking, developing the principles laid down in *Ramesh a/l Perumal v Public Prosecutor*[50] ("*Ramesh*").

14.43 The appellant ("Roshdi") was arrested by the Central Narcotics Bureau and brought to the unit in which he was staying. Numerous packets of drugs containing not less than 78.77g of diamorphine were found in Roshdi's room. Roshdi was charged with a capital charge for possessing the said drugs for the purpose of trafficking.

14.44 At trial, Roshdi admitted that he had possessed the drugs in question and known their nature. His defence was that he had not possessed the drugs for the purpose of trafficking. Roshdi claimed that he had been safekeeping the drugs for one Chandran, to whom he had intended to return the drugs; and under the principles set out in *Ramesh*, his intended return of the drugs to Chandran would not have constituted trafficking. The High Court judge rejected Roshdi's account that he had only been safekeeping the drugs, relying on, among other things, Roshdi's investigation statements, in which he had never mentioned the safekeeping defence. Roshdi was thus convicted on the capital charge and sentenced to the mandatory death penalty.

14.45 On appeal, the Court of Appeal rejected Roshdi's claims that his investigation statements were inadmissible and found that the judge did not err in disbelieving the safekeeping defence.[51] The court then considered whether, even if Roshdi's account were believed, he would still have possessed the drugs for the purpose of trafficking.

14.46 The Court of Appeal began its analysis by returning to the decision in *Ramesh*.[52] After setting out the facts and reasoning in that case, the court emphasised that *Ramesh* did not establish the general proposition that any "bailee" who received drugs intending to return

49 [2021] SGCA 103.
50 [2019] 1 SLR 1003.
51 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [44]–[70], [89]–[102] and [183].
52 See para 14.41 above.

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them to the "bailor" would never be liable for (possession for the purpose of) trafficking. Rather, much would depend on the circumstances of the case.[53]

14.47 The key inquiry was whether the "bailee" in question *knew* or *intended* that the bailment was in some way part of the process of supply or distribution of the drugs.[54] This was because the legislative policy behind the MDA was to target those involved in the supply and distribution of drugs. A "bailee" who engaged in a "bailment" knowing or intending that the "bailment" would be part of this process of supply and distribution fell within the class of persons targeted by that legislative policy.[55]

14.48 The Court of Appeal held that the requisite knowledge and/or intention might be inferred from the objective facts, including the conduct of the "bailee" and any other relevant circumstances.[56] Relevant factors included the following (although their absence would not necessarily mean that the requisite mental state was absent):[57]

> (a) whether the "bailment" was part of a systematic arrangement for safekeeping drugs, rather than an isolated, spontaneous or one-off occurrence;
>
> (b) whether the "bailee" was to receive some kind of remuneration or reward for safekeeping the drugs; and
>
> (c) whether the "bailee" knew that the "bailment" was meant to assist in evading detection by the authorities (as was the case when the role of the "bailee" was to provide a safehouse for drugs).

14.49 Finally, the Court of Appeal reaffirmed the holding in *Ramesh*[58] that there was no requirement that the Prosecution must prove that the accused person was moving the drugs in a particular direction closer to their ultimate consumer to establish (possession for the purpose of) trafficking.[59]

14.50 Applying these principles, the Court of Appeal found that Roshdi knew that by supposedly safekeeping the drugs for Chandran,

53 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [115].
54 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [115].
55 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [116].
56 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [117].
57 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [118] and [119].
58 *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 at [114]. See para 14.41 above.
59 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [120].

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he was facilitating the process of their intended sale and distribution. On his account, there was a systematic arrangement in which he would keep drugs for periods of time for Chandran in exchange for money: Roshdi was a "bailee" of drugs for reward. Further, Roshdi knew that Chandran trafficked in diamorphine and claimed that when Chandran's customers wanted drugs, he would deliver the drugs that he was allegedly safekeeping to Chandran or Chandran's couriers. This was precisely what trafficking entailed.[60]

14.51 Thus, the Court of Appeal found that even on the case that Roshdi mounted at trial, he had possessed the drugs in question for the purpose of trafficking. Accordingly, the court dismissed Roshdi's appeal against conviction and sentence.

B. Legality of prosecutorial charging practice for cannabis matter

14.52 In *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor*[61] ("*Abdul Karim*"), the Prosecution sought to persuade the Court of Appeal to reconsider its earlier holding in *Saravanan Chandaram v Public Prosecutor*[62] ("*Saravanan*") that it was impermissible to concurrently prefer two distinct charges, one concerning cannabis and the other cannabis mixture, arising from a single compressed block of cannabis-related material ("the Dual Charging Practice"). The Court of Appeal maintained its holding in *Saravanan* as to the impermissibility of the Dual Charging Practice.

14.53 The accused person in *Abdul Karim* had pleaded guilty to a charge for abetting another to possess not less than 329.99g of cannabis for the purpose of trafficking under s 5(1)(*a*) read with ss 5(2), 12 and 33(1) of the MDA. He had also consented to a similar charge pertaining to 659.99g of cannabis mixture being taken into consideration for the purpose of sentencing. Taking the opportunity presented by the existence of this cannabis mixture charge, the Prosecution sought to persuade the court to reconsider its earlier holding in *Saravanan*.

14.54 In *Saravanan*, the court had held that a charge for trafficking in or exporting or importing cannabis mixture in relation to the fragmented vegetable matter found in a compressed block could not be made out at the current level of scientific capability. The holding lay on two grounds:

60 *Roshdi bin Abdullah Altway v Public Prosecutor* [2021] SGCA 103 at [123]–[124].
61 [2021] 1 SLR 1390.
62 [2020] 2 SLR 95.

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(a) The fragmented vegetable matter did not satisfy the definition of cannabis mixture. Cannabis mixture is a mixture comprising two distinct types of material – cannabis and other plant material that was definitively identified as being non-cannabis material or plant material of indeterminate origin. As the Health Sciences Authority ("HSA") was unable to certify that the fragmented vegetable matter contained cannabis, it could not be recognised as cannabis mixture in law.

(b) The Prosecution was unable to prove *mens rea* and *actus reus* in relation to part of the fragmented vegetable matter ("Created Fragmented Vegetable Matter"), because this was created by the HSA analyst in breaking apart the compressed block during the analysis process – the Created Fragmented Vegetable Matter did not exist in the same form at the time of the offence. Thus, the Prosecution would be unable to prove (i) that the accused person knew the nature of the Created Fragmented Vegetable Matter, because it did not exist in that form at the time of the offence;[63] and (ii) the quantity of the fragmented vegetable matter at the time of the offence, because the amount of Created Fragmented Vegetable Matter was indeterminate.[64] There was no way that an accused person could be charged with the intention to traffic in, export or import something that did not exist in that form at the time of the offence.[65]

14.55 In challenging the decision in *Saravanan*, the Prosecution advanced the following arguments:

(a) As regards the *actus reus*, because it was entitled to prefer a cannabis mixture charge for the entire block (which was not controversial), it could simply as an arithmetic matter subtract the matter certified as cannabis from the weight of the block and prefer a charge for the remaining matter as cannabis mixture.[66]

(b) As regards the *mens rea*, a broader view should be adopted. An accused person's knowledge attached to a compressed block as a whole – so long as the accused person possessed the necessary *mens rea* in respect of the entire block at

63 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [13].
64 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [14].
65 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [15].
66 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [17].

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the time of the offence, he would necessarily possess the *mens rea* pertaining to the cannabis mixture for the residual portion of the same block when the pure cannabis matter had been excluded. The accused person's knowledge of the form of the drugs after the HSA analysis was irrelevant.[67]

14.56 The Court of Appeal clarified that it was *not* permissible to treat the separated fragmented vegetable matter in and of itself as cannabis mixture. Only where the fragmented vegetable matter was a part of the whole compressed block could it be treated as cannabis mixture (that is, the entire block could be treated as cannabis mixture).[68] For cannabis-related material to qualify as cannabis mixture there must exist a mixture comprising two distinct types of material – cannabis and other plant material that was definitively identified as being non-cannabis material or plant material of indeterminate origin. Once pure cannabis was removed from a block, the remaining fragmented vegetable matter would no longer satisfy the definition of cannabis mixture.[69]

14.57 The court criticised the Prosecution's arguments for falsely equivocating cannabis and cannabis mixture when they were in law two different types of drug. The Prosecution could not subtract the weight of one type of drug (that is, cannabis) from the weight of another type (that is, cannabis mixture) because the latter only qualified as a drug when it included the former.[70]

14.58 The court further criticised the Prosecution's method for making a false equivalence between the weights of the compressed block's various components as they existed at different moments in time.[71] The Prosecution sought to calculate the weight of fragmented vegetable matter by reference to the weight of the block before the HSA analysis and the weight of cannabis after the HSA analysis. This overlooked the fact that the components of the block changed as a result of HSA analysis.

14.59 The court added that accused persons who dealt with compressed blocks of cannabis material could not be said to have intended the

67 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [18].
68 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [27].
69 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [29].
70 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [34(a)].
71 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [34(b)].

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consequential creation of Created Fragmented Vegetable Matter. They could not be made liable for the consequences of the HSA analysis on the basis that they had assumed the risk for the form of the material.[72] Further, the Dual Charging Practice exposed accused persons to two separate charges even though in the ordinary case, they only contemplated transacting in one type of drug activity. This could give rise to arbitrary outcomes if the mandatory consecutive sentencing regime under s 307 of the CPC was engaged.[73]

IV. Offences under miscellaneous statutes

A. Meaning of "recruit" in section 3 of the Prevention of Human Trafficking Act

14.60 In *Rajendran s/o Nagarethinam v Public Prosecutor*,[74] the General Division of the High Court examined the meaning of "recruit" for the purposes of an offence of trafficking in persons under s 3 of the Prevention of Human Trafficking Act 2014[75] ("PHTA").

14.61 The appellants ran an entertainment club and employed several female performing artistes to dance and entertain the club's customers. The appellants asked one of these artistes ("the victim") to provide sexual services to customers, but she refused. One of the appellants ("Rajendran") then slapped the victim and threatened to slap her again if she did not comply. When the victim walked away from the conversation, he gripped the victim from behind by her neck. The victim freed herself and walked away without acquiescing to Rajendran's demands. Subsequently, the appellants were charged with various offences in respect of their activities in relation to the club. Rajendran's charges included an offence under s 3(1)(*a*) and punishable under s 4(1)(*a*) of the PHTA for having recruited the victim, by means of threatening her with bodily harm, for the purpose of her exploitation.

14.62 On appeal, the issue was whether Rajendran had "recruited" the victim for the purpose of exploitation within the meaning of s 3(1) of the PHTA, given that the victim did not succumb to Rajendran's threats and ultimately refused to provide sexual services. Tay JCA held that "recruitment" was not made out.

72 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [33].
73 *Abdul Karim bin Mohamed Kuppai Khan v Public Prosecutor* [2021] 1 SLR 1390 at [35].
74 See para 14.33 above.
75 Act 45 of 2014.

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14.63 Tay JCA observed that it was not necessary for actual exploitation to have taken place in order for an offence under s 3(1) of the PHTA to be made out. However, the ordinary meaning of "recruit" was to hire somebody as a worker or to enrol somebody as a member in a group or organisation. One could only say that a candidate had been "recruited" when that candidate was brought into the recruiter's control or into the group or organisation that the recruiter represented, whether willingly or unwillingly. If the candidate turned down or rebuffed the offer, and was at liberty to walk away from the situation, he could not be said to have been "recruited".[76]

14.64 Tay JCA held that the same reasoning applied to s 3(1) of the PHTA. The alleged "recruitment" referred to Rajendran's words and actions to get the victim to provide sexual services in Singapore. Since the victim had rebuffed these efforts repeatedly and was free to leave the club despite the threats and violence, it was more in keeping with the ordinary sense of "recruits" to say that Rajendran had *attempted* to recruit her but failed.[77]

14.65 In the circumstances, Tay JCA altered the charge to one of attempted trafficking under s 3(1)(*a*) and punishable under s 4(1)(*a*) of the PHTA, read with s 511 of the Penal Code, and convicted Rajendran on the altered charge. Tay JCA also reduced Rajendran's sentence on this charge from 14 months' imprisonment and a $2,000 fine to seven months' imprisonment and a $2,000 fine.[78]

B. Meaning of "ply for hire" for offence of use of unlicensed public service vehicle under section 101 read with Second Schedule of the Road Traffic Act

14.66 In *Sulaiman bin Mohd Hassan v Public Prosecutor*,[79] the General Division of the High Court set out the meaning of "ply for hire" for the offence of use of an unlicensed public service vehicle under s 101 read with the Second Schedule of the Road Traffic Act[80] ("RTA").

14.67 The appellant ("Sulaiman") had hired a car. The licence for the car permitted use of the car as a chauffeured private hire car, and not as a

76 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [68]–[70].
77 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [65], [71] and [72].
78 *Rajendran s/o Nagarethinam v Public Prosecutor* [2021] SGHC 200 at [76], [113] and [114].
79 [2021] 5 SLR 763.
80 Cap 276, 2004 Rev Ed.

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taxi.[81] Similarly, the insurance policy for the car provided that it did not cover rental for use as a taxi.[82]

14.68 On the day of the incident, Sulaiman drove to the Marina Bay Sands ("MBS") Hotel and parked the car at the waiting/pick-up area. Four women approached the car, and one of them spoke to Sulaiman. They agreed that Sulaiman would drive the women from MBS to the Four Seasons Hotel Singapore ("FSH") for a fee. The women boarded the car, and Sulaiman drove them to FSH. He was then paid the fare as agreed.

14.69 Sulaiman was charged with (a) using a chauffeured private car as a taxi, otherwise than in accordance with the car's licence, under s 101(1) read with s 101(2) of the RTA; and (b) using the car as a taxi while there was not in force in relation to the said use of the car an insurance policy in respect of third-party risks, under s 3(1)(*a*) read with ss 3(2) and 3(3) of the Motor Vehicles (Third-Party Risks and Compensation) Act.[83] At first instance, Sulaiman was convicted on both charges. Sulaiman then appealed against his conviction and sentence on both charges.

14.70 The key issue regarding the RTA charge was whether Sulaiman was "plying for hire" when waiting at the MBS waiting/pick-up area and when he subsequently picked up the four passengers. This was because the Second Schedule to the RTA defined private hire cars as cars that (among other things) "do not ply for hire" and taxis as cars that (among other things) "ply for hire". Thus, if Suliman had plied for hire, he would have used the car as a taxi, rather than as a private hire car.[84]

14.71 Tay Yong Kwang JCA noted that the RTA does not define the words "ply for hire". Tay JCA then held as follows:

> (a) He endorsed the test set out in *Cogley v Sherwood*[85] that the vehicle in question should be on view, the owner or driver should expressly or impliedly invite the public to use it and the member of the public should be able to use that vehicle if he wanted to.[86] The test was an application of common sense to a particular set of facts, and the inquiry had to be fact-sensitive because there could be many variations as to how a driver

81 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [6].
82 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [11].
83 Cap 189, 2000 Rev Ed.
84 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [48].
85 [1959] 2 QB 311.
86 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [49], [52] and [64].

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sourced for passengers, particularly in the context of modern-day technology.[87]

(b) Generally, when (i) a vehicle on the road was on view to members of the public; and (ii) there were indications that it was available for hire to anyone willing to pay a fare, the vehicle was plying for hire. A vehicle moving along the roads looking for fares and stopping whenever it was hailed would clearly be plying for hire. Also, a vehicle parked at the roadside or even in a carpark lot would be plying for hire if there were indications that it was available for hire. These indications might be express indications (such as markings or notices on the vehicle or near it (where the vehicle was stationary) stating that the vehicle was for hire) or implied indications (such as the fact that the vehicle was waiting at a taxi stand or a drop-off and pick-up point for passengers).[88]

(c) A vehicle was also plying for hire if it was not within sight of members of the public, but the driver was away from the vehicle asking potential passengers whether they needed transport.[89]

(d) A vehicle would not be plying for hire if there was a booking made before the trip, whether through a ride hailing app or equivalent booking platform.[90] By contrast, where there was no such booking, but the driver had reached an agreement with the passenger to offer transport services, this was plying for hire. The agreement could be arrived at expressly or impliedly, and had to involve the expectation or the giving of consideration by payment of money or its equivalent in exchange for being ferried.[91]

(e) A driver accused of plying for hire might be able to show the contrary. He could prove that he was actually waiting to pick up his family or his friend and that there would be no payment at all. Similarly, if the driver could show that he stopped at that location merely for a toilet break or to buy something, then he was not exhibiting his vehicle with a view to picking up passengers for fares. In weighing the truth in such matters, one would have to consider factors such as the particular location that the vehicle was at and the length of time taken for the professed purpose.[92]

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87 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [64].
88 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [65].
89 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [66].
90 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [67].
91 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [68]–[69].
92 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [71].

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(f) An intention to ply for hire could be formed on the spot. If a passenger opened the vehicle's door and got into the vehicle without invitation, and the driver did not say that his vehicle was not for hire, but instead started driving and asked the passenger for the destination, the vehicle would be plying for hire, even if the driver's original intention was not to ply for hire.[93]

14.72 Applying these principles, Tay JCA found that Sulaiman had been plying for hire. The evidence showed that Sulaiman had agreed on the spot to ferry the four women from MBS to FSH without a prior booking.[94] Thus, Tay JCA dismissed Sulaiman's appeal against conviction on the RTA charge. Tay JCA also upheld Sulaiman's conviction on the other charge and dismissed the appeals against sentence.

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93 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [72].
94 *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] 5 SLR 763 at [79].

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