

BREACHES OF TRUST IN SINGAPORE AND MALAYSIA. By W.J.M. Ricquier & Stanley Yeo Meng Heong. [Singapore: Butterworths. 1984. xiv+84 pp. \$35.00]

THIS book provides a useful insight into the obligations of those in fiduciary positions in Singapore and Malaysia. The first part of the book covers civil breaches of trust. The second part contains an interesting analysis of the law relating to criminal breach of trust and some observations on the characteristics of offenders convicted of committing the offence of criminal breach of trust.

The first part contains a reasonably good analysis of the fiduciary obligations of personal representatives and trustees. The author discusses the duties of trustees and the rights of beneficiaries under the following heads: a) civil breach of trust; b) trustees' investments; c) profits made by a trustee; d) measure of liability for civil breach of trust; e) liability *inter se* (that between trustees); f) defences to a claim for breach of trust.

The discussion of the law under all these heads is lucid and well organised. The weakest section of this part of the book is the law as discussed under the head "Profits Made by a Trustee". The writer in the course of analysing the complicated facts in *Habib Abdul Rahman & Another v. Abdul Cader & Anor.*, [1886] 4 Ky. 193 has failed to explain with clarity the fiduciary obligations of promoters and directors towards the companies they represent. Important cases such as *Boardman v. Phipps* [1967] 2 A.C. 46, *Cook v. Deeks* [1916] 1 A.C. 554, *Regal (Hastings) Ltd. v. Gulliver* [1942] 1 All E.R. 378, *Lagunas Nitrate Co. v. Lagunas Syndicate* [1899] 2 Ch. 392, *Erlanger v. New Sombrero Phosphate Co.* (1878) 3 App. Cas. 1218, and *Gluckstein v. Barnes* [1900] A.C. 240 which laid down various guidelines as to the obligations of directors and promoters could have been cited and discussed in order to provide a more complete perspective of the nature of fiduciary obligations in transactions that generate profit.

In page 6 of the book the author merely indicates that charities are not subject to the rule against perpetual duration. He restrains from proceeding further. Would a charitable trust be subject to the rule against remoteness of vesting in the same way a private trust would be? Would the rights of a beneficiary under a private trust be different from those of the Attorney-General who acts on behalf of the public when there is a breach of a charitable trust? Some of these ancillary issues seem to have been overlooked in the analysis of the duties of trustees and rights of beneficiaries and interested parties under different types of trusts.

Apart from these minor flaws the author, Mr. W.J.M. Ricquier, has done an admirable job in introducing the reader to a difficult area of the law of trusts. The section on civil breach of trust is easy to read and the introductory part provides a useful outline of the framework within which the law of trusts operates.

The second part of the book contains a detailed analysis of the law relating to Criminal Breach of Trust in Singapore. In pages 36 and 47 of the book the author, Mr. Stanley Yeo, takes a novel and controversial approach to interpreting section 405 of the Penal Code.

After an exhaustive analysis of the relevant case law, the author embarks on an analysis of various statistics associated with conviction rates for criminal breach of trust between January 1st 1976 and June 30th 1983 in the District Courts and recorded appeals from decisions of subordinate courts in Singapore during the same period. He comes to the conclusion that there was a dramatic increase in the incidence of criminal breach of trust from 1980 to June 1983. He ascribes this to "the rapid expansion in commerce in Singapore which has provided more jobs, and, correspondingly more opportunities to commit criminal breach of trust" [p. 66]. He adds that another possible reason for the increase may be due to "the stepping up by police and other law enforcement officers of their fight against white collar crime" [p. 66]. Referring to the data on appeals and the grounds for decisions in these appeals, which provide some information on the types of offenders involved in the commission of criminal breach of trust, the author concludes, "the victims of such offences are usually corporate or government institutions and not individuals" [p. 69].

The author, however, fails to explain why he decided to make a study of conviction rates for criminal breach of trust and appeals for the same offence by selecting a period that ranged from January 1st 1976 to June 30th 1983. Were new investigation agencies such as the Corrupt Practices Investigation Bureau set up during this period? Were more business establishments set up during the years 1980 to 1983 than during the years 1976 to 1980? The study does not explain how there was more commercial activity between 1980 and 1983 in Singapore when the rest of the industrial world was in the throes of a recession! Was there an increase in the rate of reporting of the crime of criminal breach of trust after 1980? This would have contributed directly to the increase in the conviction rates. Was there a decrease in the rate of prosecutions under other statutes that may have dealt with criminal breach of trust type situations (such as offences under the Prevention of Corruption Act or Companies Act) between 1980 and 1983? Was there a proportionate increase in civil breach of trust cases as well during the same period in order to conclude affirmatively that increase in commercial activity led to the increase in incidents of criminal breach of trust? These are some of the variables that could have been considered in evaluating the data that the author has listed under six tables.

In a book of this nature it may also have been useful to make a comparison of how the civil and criminal laws deal with concepts such as 'entrustment', and point to the differences, if any, and the rationale for such differences. For instance, a comparison could have been made of the way the civil law dealt with profits arising from the misuse of property (*i.e.* secret profits) through the remedy called the "constructive trust" and how the penal law dealt with the same situation through the offences of theft, cheating and criminal breach of trust. Going a step further, the authors could have also commented on the types of remedies that are available in each area of the law in situations where the profit is dissipated. Furthermore, some of the acts in cases in which the courts have deemed that there is a constructive trust, such as *Industrial Development Consultants v. Cooley* [1972] 1 W.L.R. 443, could have been analysed in the context of the offences of criminal breach of trust, theft and cheating in the Singapore Penal Code to illustrate the differences in the breach of trust concepts in civil law and criminal law. Should the courts go to the extent of holding every

constructive trustee criminally liable? If the constructive trust is imposed in order to prevent 'unjust enrichment' at the expense of the beneficiary, it would in effect be advancing the aims of an offence such as criminal breach of trust which was designed to afford protection to property.

The modes of dealing with breaches of trust both in civil and criminal law too could have been more closely evaluated. It is said that civil liability for breach of trust is generally based on losses caused to the trust, directly or indirectly, by the breach (pp. 24-25). Is such a measure adequate? Should the fiduciary be barred from engaging in similar activity for a period of years? Should the civil courts be given the authority to do so? Laws curtailing insider trading in various jurisdictions provide for such additional authority and civil courts have not hesitated to use such powers in these jurisdictions. Why is there no provision for corporal punishment of offenders involved in criminal breach of trust whereas provision is made for such punishment where other offences considered 'serious' under the Penal Code are committed? Should corporal punishment be decreed only when the conduct of criminals endanger the physical safety of others? Should corporal punishment be introduced for the offence of criminal breach of trust in order to reinforce the efforts to make Singapore not only physically safe but also commercially and financially stable and secure?

This pioneering effort of W.J.M. Ricquier and Stanley Yeo in an area that has been hardly written on either in Singapore or Malaysia should be commended. The law has been explained under clear precise headings and the book also contains a table of statutes referring to Singaporean and Malaysian statutes which deal with the law in the area. It is a book that will be of abiding interest to those engaged in legal work of any sort and will be more than a mere adornment to a busy practitioner's bookshelf.