

BANKRUPTCY: THE LAW AND PRACTICE. By CATHERINE TAY SWEE
KIAN. [Singapore: Butterworths, 1984. xx+379pp. Limp: S\$50.00]

Chapter Headings

1. Introduction
2. Who May be Adjudicated Bankrupt
3. Acts of Bankruptcy

4. Bankruptcy Petitions
 5. Receiving Order
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 9. Discharge of Bankrupt (sic)
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Comments

THE present Bankruptcy Act was first enacted in 1888.¹ It was not the first legislation on bankruptcy that applied in the then Straits Settlements. The first such was the Act 11 & 12 Vict. c.XXI, which dealt with insolvent debtors in India. Section 88 of this Act specifically extended its operation to the Settlement of Prince of Wales' Island, Singapore and Malacca. This early Imperial Act was repealed as regards the Straits Settlements by the Bankruptcy Ordinance of 1870,² which was in turn repealed by the Ordinance of 1888.³ The 1888 Ordinance was a copy of the English Bankruptcy Act of 1883.⁴ Thus the law of bankruptcy that obtains today in Singapore is that which was first applied in England over a century ago.

There is no other book (to this reviewer's knowledge) that deals specifically with our Act. According to the author's preface, it is her hope that this book will not only be useful to the student but will also form a handy reference book for the professional. That being the author's intention, this review will attempt to evaluate the book according to two criteria: usefulness to students (and academics) and usefulness to practitioners.

The first thing that strikes one about this book is that more than half of its thickness consists of the Bankruptcy Act, the Bankruptcy Rules and Forms. The actual commentary by the author only covers 110 pages. Sinnathuray J. in his foreword calls this an "ambitious book". Indeed it is, attempting as it does to cover both the law and practice of bankruptcy. Unfortunately one might suspect that 110 pages is inadequate to cover a topic of such width. One would, I think, be right.

¹ Ordinance II of 1888.

² Ordinance XXI of 1870.

³ *Supra*, note 1.

⁴ 46 & 47 Vict. c. 52.

The title of the book is a misnomer. This book does not cover the law and practice of bankruptcy. Basically it is a commentary on the Bankruptcy Act and Rules. It makes no pretence of being exhaustive. In form it is a paraphrase of the provisions of the Act, with a few cases slotted in as footnotes.

Looked at from the standpoint of the student, it will undoubtedly be easier to read a text such as this rather than the Act itself. From the point of view of an academic or a student looking deeper into the subject, however, this book is of extremely limited utility. While adequate as an introduction to the subject, the sparseness of the footnotes means that anyone wishing to research a particular point will have to look elsewhere. In this connexion, it would have been useful had the author included a bibliography of some sort to assist researchers. Another useful feature would have been a table cross-referencing the sections of our Act with those of the U.K. Bankruptcy Act 1914.⁵ The author cites several English cases in her text. This is inevitable, given the scarcity of local authority. However our Act is a copy of the earlier Bankruptcy Act of 1883,⁶ which was superseded and repealed (with a few irrelevant exceptions) by the Act of 1914. This being so, it would have been useful to be able to correlate the sections discussed in the English cases with the sections of our Act.

The same comments apply with greater force to the utility of this book to a practitioner. A practitioner requires greater depth than is provided here. As an introduction, the part of Halsbury's Laws of England dealing with bankruptcy is probably better, giving as it does more cases and covering the subject in somewhat greater depth.

Having said that, the text is written in a lucid style. In the main the author has followed the scheme of the Act, arranging it in a manner which is easier to grasp than the Act itself. Reference is made to the Rules as well, which is a good feature.

The book is straightforward and easy to understand. The author has steered clear of discussing controversial points. There are a few curiosities in the footnotes, for instance the citation of s. 5(1) of the Civil Law Act⁷ as authority for the proposition that a minor is any person under the age of twenty-one (on page 4, note 2). If anything, s. 5(1) of the Civil Law Act would make a minor one who is below eighteen, since the age of majority in England has been reduced from twenty-one to eighteen by the Family Law Reform Act 1969.⁸

As for accuracy, the book seems to be generally accurate in that the author has kept close to the text of the Act. I confess that I have not been through the whole book with a fine-tooth comb. However, in leafing through it I found a couple of serious omissions and inaccuracies that in my view reduce its utility, especially to the practitioner. These occur in the chapter on the disabilities of a bankrupt

⁵ 4 & 5 Geo. 5 c. 49.

⁶ *Supra*, note 4.

⁷ Cap. 30.

⁸ 1969 c.46, s.1. See *Moscow Narodny Bank v. Ko* [1982] 2 M.L.J. xcyiji (District Court, Singapore). The subject of what the proper age of majority in Singapore is, is too complex to discuss here. Suffice it to say that the resolution of the problem depends on whether s.5(1) of the Civil Law Act makes s. 1 of the Family Law Reform Act 1969 applicable here.

(Chapter 8), the chapter that one would expect would be of most interest to the layman and practitioner.

For one thing, the author seems to be under the impression that a Judge automatically vacates office when he is adjudicated a bankrupt (page 40, paragraph (d)). Section 37 of the Act does indeed provide that a Judge may not act as a judge if he becomes bankrupt. However to state that "he is considered to have lost his office which becomes vacant" displays an ignorance of Article 98 of the Constitution, which sets out the manner in which the office of Judge may become vacant. Insofar as s. 37 of the Bankruptcy Act is inconsistent with the Constitution, it is void.⁹ This point is of course a mere academic quibble; one cannot expect to be right all the time, and the author can perhaps be excused for this inaccuracy. The other inaccuracies are not quite as inconsequential.

The more serious inaccuracy is the omission from the catalogue of disabilities of any reference to s. 22 of the Business Registration Act 1973.¹⁰ This provides that an undischarged bankrupt who "directly or indirectly takes part in or is concerned in the management of any business carried on by any person required to be registered" is guilty of an offence under the Business Registration Act unless he had the leave of the High Court. The penalty for contravention is a fine of up to \$10,000 or imprisonment for up to two years. This book purports to be a statement of the law of bankruptcy. A person reading Chapter 8 might conclude that the disabilities enumerated there were exhaustive. He might be very unpleasantly surprised to find that there is this other substantial disability that is not mentioned.

Other omissions from the catalogue of disabilities¹¹ are that an undischarged bankrupt may not act either as a liquidator¹¹ or receiver¹² of a company.

One final inaccuracy. The author states (on p. 41, note 13) that a bankrupt intending to apply for leave to be a director under what is now s. 148 of the Companies Act, must serve notice of the intended *motion* on various parties. This is the danger of following the text of the Act uncritically. The Rules of the Supreme Court provide that such an application is to be made by originating summons.¹³ A practitioner who attempted to do such a thing by originating motion might be a little embarrassed to discover that he had employed the wrong procedure. One might have expected that a book on the practice of bankruptcy might have made some reference to this anomaly.

In themselves these omissions and inaccuracies may not be unduly significant. However, the fact that so many exist in a single chapter (a mere three pages long) must make one chary of accepting unquestioningly what the author says elsewhere. The counsel of prudence would be to check for oneself. If this has to be done, the book is going to be of little use to the researcher or practitioner.

⁹ See Article 4 of the Constitution.

¹⁰ Act No. 36 of 1973.

¹¹ Section 11(1)(d) of the Companies Act (Cap. 185). Reprinted 15th February 1985.

¹² Section 217(1)(b) of the Companies Act.

¹³ See Order 88 rule 2(1).

It is easy for a reviewer to sit comfortably at his word processor and throw stones at other people's work. This is not my intention. This book makes a claim to be a manual of bankruptcy law and practice. The author hopes that it will be useful to students and practitioners. In my view, neither the claim nor the hope is fulfilled. As an introductory text for students who do not want to read the Bankruptcy Act themselves, this book is adequate. As a reference book for practitioners and academics, it is seriously flawed in that the treatment of the subject is superficial. Moreover the inaccuracies that I have pointed out, while not consequential in themselves, nevertheless impel the reader to be circumspect in relying on what is stated by the author.

In summary, what you get for your money is the Bankruptcy Act, the Bankruptcy Rules, several Bankruptcy Forms and 110 pages of simple text paraphrasing the legislation.

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