

BOOK REVIEWS

INSURANCE LAW IN SINGAPORE. By TAN LEE MENG. [Singapore: Butterworths, 1988. xlv + 60 pp. Hardcover: S\$180.00.]

PROFESSOR Tan's new book, *Insurance Law in Singapore* is a most welcome addition to books on insurance law available in Singapore and is remarkable for its detailed treatment of the general principles of insurance law applicable to Singapore. It is similar in content to well known books on insurance law such as Ivamy's, *General Principles of Insurance Law*. The reader is provided with a wide "menu" to satisfy his appetite (Chapters 1 to 18). Additionally, in view of the large number of the reported decisions of the Singapore and Malaysian courts concerning motor insurance law, the learned author has included four chapters on motor insurance law (Chapters 19 to 22).

The book very properly starts with a discussion of the sources of law (Chapter 1). The application of English mercantile law to Singapore is exhaustively discussed. English statutes which form part of Singapore law are mentioned at considerable length. A very interesting English statute so mentioned is one which should be used more often in Singapore, namely, The Third-Parties (Rights against Insurers) Act, 1930. The author points out that this Act was held to be part of the local law (*King Lee Tee v. Norwich Union Fire Insurance* [1933] M.L.J. 187). He then refers to the Singapore Motor Vehicles (Third Party Risks and Compensation) Act, Cap 189, 1985 (Rev. Ed.), which no longer makes that English Act applicable to motor insurance. Likewise, for workmen's compensation insurance, the English act is no longer applicable by virtue of the Singapore Workmen's Compensation Act, Cap. 189, 1985 (Rev. Ed.). He then states his view that this English Act should still be applicable to other areas of insurance law in Singapore. This view is logical and is acceptable.

In dealing with the formation of the insurance contract (Chapter 2), the learned author has admirably analysed the recent controversial case of *Borhannudin v. A.I.A.* [1987] 1 M.L.J. 22, decided by the new Malaysian Supreme Court, which is the final Court of Appeal for Malaysia. The Supreme Court (over-ruling the High Court) found that a contract of life insurance existed in that case although a policy had not yet been issued, and the premiums also had not yet been made clear. While the author diplomatically states that this 'bold approach' might be welcome, he seems to doubt that the decision is in line with authority. Perhaps it might also be pointed out that this case serves as a good lesson to insurers as one of

the matters considered by the Supreme Court was that the company had already allotted a "policy number" to the proposer. This was unnecessary, and probably was an unfortunate marketing technique which tended to show that there already was an "acceptance", and therefore the proposer would not change his/her mind.

Capacity to contract is dealt with in the same Chapter (Chapter 2) and reference is made to section 58 (1) of the Singapore Insurance Act, Cap. 142, 1985 (Rev. Ed.), which allows a person over the age of ten years to 'enter' into any contract of insurance. This unfortunate provision was probably inspired by section 85 of the Australian Life Insurance Act, 1945. Indeed, the person who came over to Singapore/Malaya to report on the future insurance legislation and assist in its drafting, was Mr Caffin, at one time the Life Insurance Commissioner of Australia. It is to be hoped that in a future edition the learned author might devote some time in considering the apparent incongruity of this provision for non-life insurance. It is difficult to see how a ten year old (or even a sixteen year old) could understand the complexities of hull insurance for an ocean going oil tanker.

Chapter 3 covers the important question of Insurable Interest. It occasionally creates problems in Singapore for section 59 of the Insurance Act (unlike section 58) deals only with life insurance and says nothing about other types of insurance. This provision is again apparently lifted from the Australian Life Insurance Act and is *in pari materia* with section 86. As the learned author rightly points out, one can also look at the English Life Assurance Act, 1774, and the English Marine Insurance Act, 1906, both of which are applicable to Singapore. It is interesting to note that with regard to the grey area of insurable interest in real property insurance, the author does not go so far as to say that a "proprietary interest" is required, and suggests that mere possession may well give rise to an insurable interest and cites *Marks v. Hamilton* (1852) 7 Exch. 323. It would have been nice if the author had also delved into the future and considered the necessity of making changes in the area of insurable interest by legislation; as indeed Australia has recently done by the Insurance Contracts Act, 1984.

The various aspects of another important subject, namely, non-disclosure and misrepresentation, are dealt with in Chapter 4. The most intriguing section in that chapter is where the author gives his evaluation of the doctrine of *uberrima fides*. He expresses the view (which few would challenge) that the law has developed an unhealthy complexion in this area and is far too favourable to insurance companies. Reference is made to the United Kingdom's Law Commission Report (Cmd 8064) and its recommendations. Reference is also made to section 16 (4) of the Singapore Insurance Act to show that the effect of the statutory warning laid down therein is of "questionable" effect. A reference to the relevant provisions of the Australian Insurance Contracts Act, 1984, would also have been helpful to show how other countries are tackling the question of non-disclosure and misrepresentation.

Unlike most books of a similar nature, the learned author has devoted a full chapter on Illegality (Chapter 9). An interesting "head" of illegality

dealt with is where the claim offends “the conscience of the Court” (pp. 204-206) even though the illegality did not cause the insured’s loss. Reference is made to the recent decision of the English High Court in *Euro Diam Ltd. v. Bathurst* [1987] 1 Lloyd’s Rep 178. The decision was confirmed by the Court of Appeal after the manuscript was written. [See [1988] 2 All E.R. 23] Perhaps another way of looking at such cases is to consider them as those involving a contravention of foreign law (of a friendly State) following the Singapore Court of Appeal decision in *Patriot Pte. Ltd. v. Lam Hong Commercial Co.* [1980] 1 M.L.J. 135, which was a case involving an avoidance of Indonesian customs duty.

With regard to the question of illegality and life policies, the author deals at some length with the suicide of the assured and expresses the academic view that in Singapore insurers could deny liability for non-insane suicide on both the grounds mentioned by Lord Atkin in *Beresford v Royal Insurance Co. Ltd* [1938] A.C. 586, namely, (i) insurers have not agreed to pay on that happening, and (ii) on grounds of public policy as a benefit should not accrue to a “criminal” from his crime. In practice, however, life policies issued in Singapore now contain an express clause that payment would not be made if suicide is committed within one year, thereby implying that payment would be forthcoming after that period. Additionally, unlike the draconian English position under the Suicide Act 1961, where those committing suicide could be “hanged” after death and their property forfeited, suicide was never a “crime” under Singapore Law although attempted suicide is. The Indian Penal Code (which became Singapore law since 1871) obviously recognised that certain Eastern customs considered suicide as not only proper but indeed honourable; hence the accepted practice of “suttee” in India where the bereaved widow would jump into the funeral pyre of her husband.

An interesting situation which seems to have inadvertently escaped the author’s attention is whether moneys would be paid on a life policy where the life assured suffers judicial execution as a result of a crime committed by him. It is also interesting to note that both this problem and the related problem of suicide has now been solved in Australia by section 120 of the Life Insurance Act, and perhaps should undergo similar legal surgery in Singapore in all fairness to the beneficiaries who may be innocent of the crime and may need the moneys badly.

Chapters 10, 11 and 12 deal with three related topics, namely, (i) loss within the ambit of a policy, (ii) claims and settlements, and (iii) the measurement of loss. Important areas concerning these topics have been dealt with by the author. These chapters would be very useful to readers who are members of the insuring public; for they show the importance of little things such as giving notice of loss and giving notice of intended prosecution. The author has also discussed at some length the arbitration provision to be found in insurance policies, and the provisions requiring legal proceedings to be instituted within a stated period. While it would be unfair to expect too much out of an author writing a book on the general principles of insurance law, readers would be happy to read the author’s views on the unfairness and harshness of some of these provisions and perhaps this can be included in the next edition.

Another area where more space could be devoted is with regard to fraudulent claims (pp. 278-281). More case law involving fraud on each major type of insurance such as life, motor, fire and marine would have added to the lustre of the book. In a sophisticated business centre such as Singapore, fraud has become a frequent visitor.

Chapter 13 covers the important but somewhat technical area of Assignments. Relevant statutory provisions have been noted and explained with clarity both with regard to life and non-life insurance. The related question of trust policies in life insurance is also dealt with. It is nice to see that the author has devoted considerable time and space to the vexed problems relating to what are known as "section 73 policies". These are policies where a statutory trust could be created by naming the wife/husband, and/or children as beneficiaries; and are provided for in section 73 of the Conveyancing and Law of Property Act Cap. 61, 1985 (Rev. Ed.). The author rightly points out that such a trust may provide the beneficiaries not only with a vested interest but also with a contingent interest; *Re Chong Chak Choon* [1937] M.L.J. 258, and *Re Fleetwood's policy* [1926] Ch. 48 provide useful examples.

The ubiquitous Insurance Agent has also received special treatment in Chapter 18. They are the persons with whom the uninitiated members of the public have to deal with in effecting insurance; and the success or failure of a claim may well depend on what these persons may have written down in filling in the proposal form for the proposer. A masterly presentation has been made of relevant cases involving such agents and of special interest is *The Melanie* [1984] 1 M.L.J. 260. In that case, Salleh Abas C.J. (as he then was) pointed out that local agents dealt directly with customers, and if communications were made to them, the insurance company should not take advantage of the fact that those communications were not conveyed to them by the agents.

An interesting legal issue raised by the author in this chapter is the effect of sections 93 and 94 of the Evidence Act of Singapore on the admissibility of oral statements made to agents. He refers to the case of *China Insurance Co. Ltd. v. Ngau Ah Kau* [1972] 1 M.L.J. 72 where the Federal Court (by a majority) took the view that as the answers in the proposal form had become terms of the contract, it was clear from those sections (Malaysian sections 91 and 92) that it was not open to the insured to make use of the agent's evidence to contradict or vary or add to the terms. Suffian F.J. (as he then was), in a notable dissenting judgment, took the view that the written answers on the proposal form did not amount to contradicting the terms of the contract. The author sides with the majority view; but what merits due consideration is whether a person should be bound by statements *not made* by him, but inserted by the agent; and sometimes for selfish reasons. The possible applicability of *non est factum* or equitable fraud etc. should be explored. While many of the problems created by agents has now been resolved by amendments to the Insurance Act in Malaysia, there are as yet no corresponding provisions in Singapore. The views of the author on the propriety or wisdom of such changes would have been most welcome.

Last, but not the least, are four valuable chapters (19 to 23) relating to Motor Insurance. Of particular interest to insurers and third parties are the very penetrating comments on the various aspects of the Motor Vehicles (Third Party Risks and Compensation) Act Cap. 189, 1985 (Rev. Ed.). Local cases such as *Overseas Assurance Corporation Ltd. v. Lee Teik Teik* [1980] 1 M.L.J. 205, and *Q.B.E. Insurance Ltd. v. Dr. K. Thuraisingham* [1982] 2 M.L.J. 62 are discussed and dissected to show that insurers may still not be liable to the third party in many situations.

All in all, there is no doubt that the learned author has achieved his desired object of enriching the local legal literature on Singapore Insurance Law. This book would not only be invaluable to lawyers and law students, but also to members of the insurance world and interested members of the public. It must now be realised that in this complex and violent world, even without the assistance of so called "Acts of God", loss and destruction of life and property is an ever present possibility and without insurance the consequences would become unbearable.

One last thought on the book. Useful and attractive as it already is, its value would be greatly enhanced if only the author could spare the time for adding separate chapters on the major types of insurance in the next edition. This has indeed been done with regard to motor insurance in this edition. If this suggestion seems to be too demanding, the author can console himself with the thought that human beings are rarely contented.

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