

BOOK REVIEWS

LAW OF INSURANCE. By POH CHU CHAI. (2nd Edition). [Singapore: Longman. 1990. xliv + 932 pp. Hardcover: S\$140.00]

THE author has wisely taken the opportunity to revise and expand on the text of the first edition of the above book. (The review of the first edition by the same reviewer can be found in the *Malaya Law Review*, Vol. 29 (1987) at pp. 349-351).

The second edition comprises twenty chapters as opposed to the previous fifteen. Hitherto, it was a "small" book, and now it has become a "big" book with the text running into 916 pages compared to the previous 281 pages. However, as before, it basically remains a book on the general principles of insurance law. In the first edition, motor insurance was also specifically dealt with. In this edition, not only motor insurance, but workmen's compensation insurance also receives specific treatment. The reason of course is obvious; both types of insurance are compulsory in Singapore, and it is both desirable and profitable to give special treatment to both.

As stated above, the present edition has five extra chapters, they are:

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| 1. The Proposal Form | Chapter Three |
| 2. Terms and Conditions of the Policy | Chapter Five |
| 3. Common Terms and Conditions in Motor Insurance Policies | Chapter Sixteen |
| 4. The Authorised Driver and the Policyholder's Insolvency | Chapter Eighteen |
| 5. Workmen's Compensation Insurance | Chapter Twenty |

Welcome as the above chapters are, it is somewhat disappointing that life insurance does not find a special place in the book; especially when insurance is basically divided into life and general insurance. The mixture of these two major types of insurance could lead to confusion and inadvertent errors. This can be seen in the new chapter on "The Proposal Form" (Chapter Three). The "indisputability clause", which is to be found in the Life Policy itself, is dealt with in that chapter, as if it were part of the proposal form. Moreover, being dealt with without focus, the value and importance of that clause in life insurance in Singapore hardly emerges in that chapter. The learned author may not have known that the clause has an interesting history in Singapore. The phrase "except for fraud" to be found in that clause in Singapore

life policies, is a special imposition by the Insurance Commissioner of Singapore on all life insurance companies, so that the English principle of public policy that no man shall benefit from his own fraud may become applicable. Moreover, though a few old English cases may refer to it, it really became popular in the United States. Even today, English life companies in Singapore do not favour that clause.

Another problem is that an important topic in life insurance may appear in different chapters, and one must know the subject well enough to be able to look for them and add them up to get a fuller picture. For example, section 73 policies (trust policies) and the suicide clause are important topics in life insurance. Both are dealt with under "Illegality" (Chapter Nine) and "Assignment of Policies" (Chapter Fourteen). A comprehensive treatment in one place could greatly benefit readers.

A brief comment on the new chapters may now be made. Subject to the comments made above, the chapter on "The Proposal Form" (Chapter Three) is a praiseworthy attempt by the author to put down important points concerning the proposal form on paper. The various aspects of the basis clause are dealt with, and he rightly points out (p. 125) that the clause works unfairly against the insured. He refers to the 1980 (English) Law Commission Report, but stops there. What further happened was that on 28 April, 1983, the British Government announced that changes to the law would be introduced in Parliament as soon as there was legislative time available. In the meantime, the Association of British Insurers, fearing that insurance contracts might be brought within the scope of the Unfair Contract Terms Act, 1977, came to an understanding with the British Government that they would introduce voluntary measures designed to encourage observance of normal good practice in the industry. Hence, a "Statement Of Long Term Insurance Practice" (the "Statement") was adopted by British insurers in January 1986. It has worked well, and hence there was little need for legislative change. In the Statement the basis clause is given the death sentence and it was expressly stated therein that neither the proposal nor the policy shall contain any provision converting statements of fact in the proposal form into warranties. Thus the basis clause has been suitably amended in England on the proposal forms. It is also noteworthy that Singapore will be following suit and a similar Statement will be adopted by members of the Life Insurance Association soon, and one will at last see the demise of the basis clause in Singapore.

The new Chapter Five deals with "Terms and Conditions of the Policy". It deals generally with various types of conditions and various types of warranties. There is also a section on "Exclusion Provisions". Relevant cases and legal principles are well discussed in the chapter, and the practitioner will find the chapter most useful. The learned author explains, for example, that where there are two equally dominant causes and one is expressly excluded from the policy, the policy does not pay.

The chapter on "Insurance Agents" (Chapter Six) is not new, but worth mentioning. It was formerly Chapter Fourteen. A new section has been added with regard to the measure of damages one might recover from a negligent agent (or broker). The main comment one has to make is that the statutory provisions relating to insurance agents in Singapore should appear somewhere in the chapter, and they are section 33 and section 34 of the Insurance Act (Cap. 142). By virtue of the 1986 Amendments to section 33 which came into force in 1987, the Monetary Authority of Singapore (MAS) can now pass an order prohibiting an insurance agent or insurance broker from carrying on business where he has been convicted of an offence involving fraud, dishonesty or moral turpitude, or the MAS is satisfied that the person has been involved in any activity prejudicial to the public interest. Again, under section 34(10) as amended, the MAS is authorised to cancel the licence of any insurance agent or broker issued under sub-section (6). The agents or brokers referred to in this sub-section are much more restrictive than that under section 33, and consists of a few dozen only.

Chapters sixteen to nineteen deal with Motor Insurance. Chapter Sixteen ("Common Terms and Conditions in Motor Insurance Policies") is new. Among other things, the legal implications of car pool arrangements are also discussed, in view of the question of "hire or reward". The author calls for a permanent arrangement with insurance companies regarding car pool arrangements; however insurance companies may not be so enthusiastic about it since car pools have decreased in importance as the "four persons" rule has been abolished and no money is saved in entering the Central Business District (CBD) by forming a car pool.

The new Chapter Eighteen is on "The Authorised Driver and the Policy Holder's Insolvency". The authorised driver's separate right of indemnity under the policy is carefully explained. It is also pointed out that the notice of repudiation by the insurer must be given separately to the authorised driver as well. The Chapter ends with the cheerful note that with regard to motor claims in Singapore, the third party is placed in a much stronger position than his counterpart in England.

Finally, we have the new Chapter Twenty which attempts to explain the main points relating to "Workmen's Compensation Insurance". One of the points touched upon is the fact that under the Act, the accident must arise "out of and "in the course of employment. This formula was apparently based on similar law in England, and amounts to a conjunctive (or double) requirement. It may be pointed out that in Australia it is a disjunctive (or single) requirement. This formula has given trouble in Singapore; for example, in the case of *Nani v. P.U.B.* [1981] 2 M.L.J. 166, which unfortunately has not been discussed. It is to be hoped that the point can be dealt with more extensively in the next edition. However, on the whole, the Chapter is well written and would give a good background to any student of workmen's compensation insurance.

All in all, Associate Professor Poh can be proud of his new edition. Minor shortcomings are to be expected in every book and in no way detracts from the value of the book. He is to be sincerely congratulated for a job well done and there is no doubt that both practitioners and students alike will find it both informative and useful.

MYINT SOE

THE APPLICABLE LAW IN SINGAPORE AND MALAYSIA. By MICHAEL F. RUTTER. [Singapore: Malayan Law Journal. 1989. xlv + 748 pp. (including index). Hardcover: S\$320.00].

OUTSIDERS are apt to be surprised that such a basic matter as the question of what law applies in Singapore and Malaysia today, is far from being a clear-cut and straightforward one. The short reason for this state of affairs lies in the complicated political and constitutional history of the territories that comprise present-day Singapore and Malaysia. To borrow the author's analogy, the legal systems of Singapore and Malaysia today may be likened to a river fed by several tributaries of different laws. The bulk of the river water is indigenous, but significant portions are traceable to feeder streams that originated elsewhere (*e.g.* England, India). From the eighteenth century onwards, British colonialism gradually superimposed the common law on pre-existing customary and indigenous laws in the region. Thus, over a period of time, English law was "received". However, as local legislative institutions developed, and particularly after Independence, local legislation became an increasingly important source of law. In addition, under the common law doctrine of precedent, the decisions of English courts, and the predecessor courts of present-day Singapore and Malaysian courts, also lay claim to application as sources of law. Thus, to answer the question what law is applicable in Singapore and Malaysia today, one cannot stop at the statute book, but must go on to grapple with questions of reception and precedent. This exercise is an essential one for every local law student and practitioner, and Michael Rutter's book offers a valuable guide for navigating the choppy seas involved.

The book begins with a general examination of the doctrines of reception, precedent and sources of law. The main body of the book is then divided into three parts: Part I deals with the Singapore position and Part II, the Malaysian one. The general approach for each of these two Parts is to begin by outlining the political and constitutional history of the country concerned. This provides an essential backdrop for understanding the diversity in the sources of applicable law in Singapore and Malaysia. There are two main sources of applicable law: legislation and case law. Applicable legislation may be English, Indian, Malaysian or Singaporean in origin. Applicable case law may come from England, India, Malaysia,