

## BOOK REVIEWS

MALLAL'S DIGEST OF MALAYSIAN AND SINGAPORE CASE LAW 1808-1988. BY MALAYAN LAW JOURNAL AND VARIOUS SPECIALIST EDITORS (4th Edition) Volume 4. [Singapore: Malayan Law Journal. 1990. lvi + 334 pp. Hardcover: S\$400.00 per volume.]

*MALLAL'S Digest* has always been one of the essential reference tools of the legal profession. It is useful for a comprehensive coverage of the case law in a particular area, as it gives the user a succinct summary of cases under specific headings. It plays, in the local context, the equivalent of the role of the English and Empire Digest.

Volume 4 is devoted exclusively to the subject of "Criminal Law". The volume has the usual preliminary contents that one would expect in a book meant for reference. It has a subject index, a table of cases with cross references to where they are found in the scheme of things, a section devoted to explaining the abbreviations used for the various local reports and publications. It also contains a succinct but lucid explanation of the system of cross-referencing used.

All these sections go a long way in making the Digest an adequate reference tool. However, it is humbly suggested that perhaps a little more could be done to make it more complete. Singapore and Malaysia have had a long history of sharing similar legislation in the area of criminal law. For example, both the Penal Codes of Singapore and Malaysia are derived from the Indian Penal Code drafted by Lord Macaulay and enacted in 1860. As such, although the decisions on similar provisions from Malaysia and Singapore, strictly speaking, are from different jurisdictions and are thus not generally binding, courts in both countries have found it fruitful to look to decisions of each other for guidance on certain points of law. In the light of such cross-referencing by the courts themselves for persuasive authorities, it may be useful for there to be included in the Digest a table showing the provisions in the penal statutes of Malaysia and Singapore that correspond with each other. In this way, anyone using the Digest as a reference tool will be able to tell, from a quick glance at this comparative table, the corresponding provisions in the Penal Codes of both countries. This will provide a quick pointer to all the cases that one has on the relevant provisions, thus speeding up the research process. At the same time, this table can also include corresponding provisions in previous legislative enactments, *e.g.*, the Straits Settlements Penal Code.

Even if this is not possible for editorial reasons, perhaps there could be cross-referencing to cases on the corresponding provision in a corresponding legislation in another jurisdiction. This will still ensure quick and convenient cross-referencing.

When perusing the subject index in this volume of the Digest, one cannot help but notice an odd omission. In the normal publication of law reports by the Malayan Law Journal, there is usually found in the subject index a section entitled "Words

and Phrases” where reference is made to a case or cases where the court has defined certain words or phrases, especially those found in provisions of legislation. However, in the subject index of this volume of the Digest, this is nowhere to be found. This is rather surprising as the judicial definition of words and phrases is especially useful in the context of interpreting statutes and codes, in which the criminal laws of Singapore and Malaysia are found. It is thus suggested that perhaps this section should have been added to the otherwise quite complete subject index to make it even more useful and convenient to the user.

There is a paucity of editorial reference to academic works or articles in local law journals or case comments. Although there is some effort made to refer to editorial notes in the law reports, there does not seem to be any concerted effort made to refer to any articles or notes which have been published on certain areas or cases. This would have been helpful to any user in that he can choose, if he should so wish, to make further reference himself to these works. It would save the user considerable time and trouble if he could find such references readily available in the same work. An example is the question that has vexed the local courts: Does section 397 of the Penal Code create a substantive offence such that it can be read with section 34 to make the accomplices jointly liable? In both Singapore and Malaysia, section 397 deals with the situation where the offender commits robbery while being armed or uses a deadly weapon in the course of robbery. The provision provides for additional punishment. If it is a substantive provision, then section 34, which deals with joint liability, can be invoked against the accomplices of the offender thus rendering them liable to additional punishment. The courts have been divided on this point. Thus, it might be enlightening to see how the academics have assessed the relative merits of both sides of the dispute. However, there is no reference at all to any works on this point, when they do exist. It may not be strictly necessary in a Digest of cases, but it would most certainly be useful to have such leads to further readings for the user.

The references made in the digests themselves to cases which were followed, approved or not followed were a little inconsistent. An example is found in the portion discussing Exception 7 to section 300 of the Penal Code of Singapore. In the digest of the decision of the court in the case of *Mimi Wong & Anor. v. Public Prosecutor* [1972] 2 M.L.J. 75, references were made to Indian decisions, on certain points of law, which were approved; yet in the digest of *Cheng Swee Hin v. Public Prosecutor* [1981] 1 M.L.J. 1, where the Court of Criminal Appeal in Singapore purported to adopt the definition of “abnormality of mind” as expounded by Lord Parker C.J. in the English Court of Criminal Appeal decision of *R. v. Byrne* [1960] 2 Q.B. 396, no reference is made to this, nor is the English case mentioned at all. This is rather unsatisfactory as the user would like to know the source of the definition. This way he may be able to pursue the point further by looking at the referred case itself and, perhaps, determine if this reference by the court is defensible. This brings us to an entirely separate point: there seems to be no attempt in this section to point out that Exception 7 is derived from and is *in pari materia* with section 2(1) of the English Homicide Act 1957. This would again be useful if the user wanted to pursue the point further.

At the end of the day, it must be said that this volume is, nonetheless, a very useful tool for both the practitioner and the student. Its strength lies in the comprehensive coverage and logical arrangement of the cases. Any possible suggestions that I have made for improvements do not detract from its overall usefulness as a research tool. This volume certainly fills a vacuum and should find

a place in any collection of Singapore and Malaysian legal publications or any law library.

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