

LAW OF INSURANCE BY POH CHU CHAI. (3rd Edition). [Singapore: Longman. 1993. li + 1296 pp (including index). Hardcover: S\$200.85/RM312]

IT is nice to note that Associate Professor Poh has been able to revise and expand on the text of the 2nd Edition of the above book [the review of the 2nd Edition by the same reviewer can be found in the Singapore Journal of Legal Studies (1991) at pp 269-272].

The 3rd edition has greatly increased the coverage on Workmen's Compensation.

It is now to be found in three Chapters (Chapters 24 to 26). The author has also made an attempt to take into account recent decisions, mainly from English, Singapore and Malaysian Courts. On the legislative front, the author has taken note of the changes made by the Limitation (Amendment) Act 1992 and its effect, particularly on insurance brokers.

While the book is basically on the general principles of insurance law, special coverage (about one-third of the text) is deliberately given to Motor & Workmen's Compensation Insurance. Both Life Insurance and Marine Insurance should also be given prominence as they are wider and far more important branches of insurance law. At the moment, hardly any special mention is made of Marine Insurance, and Life Insurance is sparsely dealt with, and spread over various places.

Even though special Chapters have not been devoted to Life Insurance, the reviewer feels that some matters relating to Life Insurance in Singapore deserve more in-depth treatment. To achieve this, one will have to study the Australian Life Insurance Act, as many provisions in the Singapore Insurance Act have been lifted from the said Australian Act. It was Mr Caffin (the then Life Insurance Commissioner of Australia) who came over in the early sixties to report and prepare a draft for insurance legislation in Singapore and Malaysia, and these were later taken into account in drafting the Singapore and Malaysian Insurance Act.

For example, there is this vexed question of insurable interest in Singapore. Under section 57 of the Singapore Act, insurable interest is also presumed in cases where a person can insure the life of another person on whom he/she is wholly or partly dependent. This provision does not exist in English Law, but is lifted from the Australian Act. Thus, while quoting the view expressed in the English case of *Harse v Pearl Life Assurance* (1904), Associate Professor Poh does not express any view on whether the dependency is a moral or legal one. A perusal of Australian books on Life Insurance will show that the purpose of the Life Insurance Act (first passed in 1945) was to cover moral obligations as well. A *de facto* wife, for example, would be clearly included in the list.

Another area of dispute in life insurance in Singapore is the scope of the indisputability clause which is inside the policy, but Associate Professor Poh insists on dealing with it under the section "Proposal Form", apparently because the operation of the clause is related to answers in the proposal form. This clause, by order of the Insurance Commissioner of Singapore, has to contain the phrase "except for fraud". However, no attempt has been made to explore what "fraud" means in this context. Is it "fraud" amounting to deceit (tort) or fraud amounting to fraudulent misrepresentation (contract), or "active fraud" which involves or borders on concealment?

The "basis clause" is another area where further treatment is required. The situation has now changed in Singapore because of the LIA Statement of Life Insurance Practice and the GIA Statement of General Insurance practice which prohibit member insurance companies from converting statements by the proposer into a warranty. Thus the basis clause in a Singapore proposal form has been watered down and is now confined to statements of "material facts", and the answer is only to the best of the knowledge of the proposer. The LIA and GIA statements came into effect on 1 April 1993 and 17 March 1992 respectively.

However, with regard to the "suicide clause" Associate Professor Poh does give his views (at pp 532-535). He points out that in Singapore suicide is not a crime. But attempted suicide is, and therefore suicide must be unlawful. Nevertheless, it has to be pointed out that the Penal Code does make sense in not making suicide a crime. The English were aware that religions such as Hinduism and Buddhism (which are not monotheistic) did not subscribe to the view that as God created human

life only God can take it back. Thus “suttee” (where the devoted wife commits suicide by jumping onto the husband’s funeral pyre) was prevalent in India at one time. In contrast, in England, suicide was regarded as being both against the law of God and the law of Man.

Insurance claims are covered in Chapters Ten and Eleven, and the author has done a good job. There are, however, two areas which might be looked into in the next edition. First, there is the question of “mistake” in cases where payment is made by the tortfeasor’s insurance company (to a prospective plaintiff) for damage to the car (or motor-cycle) through the motor repairer; and the discharge voucher (by accident or design) includes the phrase that the payment covers personal injuries as well, though the claimant at that time was only claiming for damage to the vehicle. This voucher is happily signed by the vehicle owner without any knowledge of that wording. When litigation is commenced, the insurance company (taking over for the defendant) adopts the stand that the discharge voucher covers personal injuries as well. Is *non est factum* an answer to this problem? If not, what is?

The second area is the payment on death of the assured of an immediate sum, now raised to \$150,000/- (with effect from 1 April 1994) in respect of a life policy, to the “proper claimant”. The substance of this provision is taken from the Australian Life Insurance Act and deserves special study.

All in all, one has to understand that in a book which attempts to cover such a wide area of insurance law, shortcomings are to be expected. This does not detract from the great value of the book. The law is apparently up-dated to the middle of 1993 (no date is given) and new cases such as *Anwar bin Ismail v Tan Sri Tan Chin Tuan* (1992); *Asia Insurance Co Ltd v Tat Hong Plant Leasing Pte Ltd* (1992), *Chng Soo Sim v Industrial & Commercial Insurance (M) Bhd* (1992); *Cosmic Insurance Corp Ltd v Hup Choon Guan Trading Co* (1991); *Federal Insurance Co v Nakano Singapore (Pte) Ltd* (1992); *Lee Ting Sang v Chng Chi-Keang* (1990); *Manonmani w/o Shanmugavelu v GEL Assurance Co Ltd* (1991); *National Employers Mutual General Insurance Association v Globe Trawlers Pte Ltd* (1991); *New Zealand Insurance Co Ltd v Ong Choon Lim* (1992); *Kathirvelu v Pacific & Orient Insurance Co Sdn Bhd* (1990); *QBE Insurance (International) Ltd v Julaiha Bee Bee & Ors*, ought to be carefully noted.

One last observation! In several places, one is not quite sure as to what extent the English law referred to in the book is applicable to Singapore. The Application of English Law Act (1993) has now made clear what English statutes are applicable. This Act, which came into effect on 12 November 1993, was apparently not in existence when this edition was written. It is significant to note that the English Life Assurance Act 1774 was regarded as applicable to Singapore under the Second Charter of Justice 1826. It is now applicable by virtue of the Second Schedule of the Application of English Law Act 1993, which incorporates the said English Act as section 61A of the Insurance Act.