

MALLAL'S DIGEST – INDEX TO LEGAL PERIODICALS OF MALAYSIA AND SINGAPORE 1932 to 1995 (Singapore, Kuala Lumpur: Malayan Law Journal, 1996; S\$180)

THE last comprehensive index to local legal periodicals was published approximately a decade ago (see the *Index to Singapore/Malaysia Legal Periodicals 1932-1984* by Molly Cheang, Sng Yok Fong & Carolyn Wee (1986)). In a review of that particular publication (see Phang (1987) 29 Mal LR 133), I expressed the concern that “[s]ome form of updating or noting-up is essential if the work is not to become obsolete” (see *ibid*, at 136). Indeed, and as we shall see, the burgeoning of both local literature as well as new local journals during the last decade or so has in fact made updating imperative (insofar as the latter point is concerned, see, *eg*, the *Singapore Academy of Law Journal*, the *Asia Business Law Review*, the *Business Law Journal*, *CLAS News*, the *Industrial Law Reports*, *Malaysian Law News*, *Malaysian Tax Cases* and the *Supreme Court Journal*, amongst others; and to this may be added the very recently inaugurated journal, the *Singapore Journal of International & Comparative Law*). On this basis alone, the present volume (updated to take into account material published up to 1995) is to be warmly welcomed. It should be noted, however, that the present work is part of *Mallal's Digest*, and is thus distinct from the prior work, although a large amount of overlap is, in the nature of things, inevitable.

Before, however, proceeding to review the actual contents of the present work itself, a more general (but no less significant) point should be made on the utility of legal literature in general. Approximately a decade ago, I expressed the view that “practitioners would ... have relatively less time for close scrutiny of a particular area of the law, given, especially, the constraints of practice” (see Phang (1987) 29 Mal LR 133 at 135-136). I had also observed that “many articles deal with relatively esoteric areas of the law that might not be relevant to practice, although it should be pointed out that labels such as ‘esoteric’ ought not to be utilized indiscriminately in order to obviate the need for creative thinking, even in the realm of legal practice” (see *ibid*, at 136). Those rather tentative views now need to be both concretized in part, and recanted in part. Legal literature across the Commonwealth has in fact become increasingly important, not least because of the increased complexity of the law as well as the infusion of international and comparative elements. The very positive role played by academics with respect to both synthesis as well as analysis

(particularly given the veritable maze of rules and principles embodied within the common law system) has also been emphasised, particularly in recent years (see *eg*, Birks, "Adjudication and interpretation in the common law: a century of change" (1994) 14 LS 156). Indeed, in a recent essay, I had occasion to make the following observations that I cannot now put better and thus quote the material portions as follows (see Phang, "Trends in the Core Areas of Singapore Law Between 1990 and 1995 – Contract" in *Review of Judicial and Legal Reforms in Singapore Between 1990 and 1995* (1996) at 316):

... in the absence of academic syntheses, it is entirely conceivable that much time would be wasted by practitioners in casting around for relevant cases and statutory provisions; indeed, in the nature of things and given the nature of legal practice, it is entirely reasonable to suppose that many relevant cases would actually slip through the practitioner's research net. It should also be mentioned that academic writings also advance propositions on how the law ought to be. In this particular respect, it is respectfully submitted that such writings do also have a substantive role to play insofar as the ideas and concepts tendered can be adopted by practitioners and/or courts to *advance* the law: via both logic and/or indigenous development. At this juncture, however, it is my own personal view that because academics such as myself advance, for the most part, prescriptive propositions based on our analysis of the existing law, not every proposition can be directly applicable to actual cases themselves. For one thing, the appropriate facts have to exist and such appropriate occasions are themselves often few and far between; for another, even in an "ideal" factual context, the proposition advanced may not be perceived to be sufficiently persuasive, and this can obviously be due to a variety of reasons ... But one thing is clear: academic writings do (potentially at least) help in both synthesising and describing the law (thus facilitating research and analysis), as well as prescribe possible directions for the future development of the law in a given area. However, academics should also sensitise them to the felt needs of the times, for it is a stock criticism of academic writings that they fail to take into account what is practically required by the profession at large. A balance thus needs to be struck. The academic must attempt his or her level best to meet the needs of practitioners, but must also constantly guard against the loss of that degree of academic "independence" that may make all the difference between being a subservient and thoroughly bored cog in the machine of practice, and being an equally respected partner in a joint enterprise where academic scholarship and legal practice have a vibrant and interactive relationship.

Indeed, the increased citation of academic literature in law reports across the Commonwealth bears testimony to the importance of academic literature in the practical sphere. The present work is thus of great importance, particularly when viewed through the lenses of indigenous legal development. On another level, it should be pointed out that there are many local articles that provide interesting insights into the wider (especially historical) development of the law, and the present work thus also contributes in this regard.

Structurally speaking, the present work differs from its predecessor in a few significant respects. First, the 'Subject Index' "lists articles according to the subject headings in Mallal's Digest (4th edition) together with some additional categories" (see the 'Preface' at v), whereas the previous work utilised subject headings based on the Library of Congress Subject Headings (see *Index to Singapore/Malaysia*

Legal Periodicals 1932-1984 by Molly Cheang, Sng Yok Fong & Carolyn Wee (1986) at v). The use of categories varies widely, and there is no uniquely correct classification. In the present work, the additional categories comprise the following: “(a) Commodities and Futures Trading; (b) Communications and Information; (c) Miscellaneous; (d) Personal Property; (e) Public Health; and (f) Restitution” (see the ‘Preface’ at v); the reader is further informed that “[t]opics not falling under Mallal’s Digest subject headings are distributed according to the ‘List of Cross-References to Subject Headings’ which is found on page xi” and that “[u]sers should refer to this ‘List of Cross-References’ as an initial starting point to locating articles on specific topics” (*ibid*). In addition (and very usefully) “articles written in Bahasa Malaysia are indicated by ‘[BM]’” (*ibid*). The ‘List of Cross References to Subject Headings’ is, in fact, quite comprehensive and useful. However, it is regrettable that so many major topics were placed under the subject heading of “Miscellaneous”; these include “Comparative Law”, “Law Reform”, “Jurisprudence”, “Legal Aid”, “Legal Education” and “Medico-Legal Issues”; all these topics centre on conceptual as well as visionary discourse and are equally important (and, in some instances at least, more important) than the more technical topics. Given that only an additional six categories are involved, it is hoped that these may comprise additional categories in a future edition.

Secondly, unlike the prior work, the present work includes two very helpful additional categories – an ‘Index to Case Notes’ and an ‘Index to Legislation Notes’, respectively. These two additional categories will be of especial utility to practitioners who may want commentary on a particular case or statute.

Thirdly, the prior work included “[l]egal articles on Singapore and Malaysia appearing in foreign periodicals” (see *Index to Singapore/Malaysia Legal Periodicals 1932-1984* by Molly Cheang, Sng Yok Fong & Carolyn Wee (1986) at iii), whereas the present work does not. On this particular point, more later. Finally, the present work contains an ‘Author Index’ which differs from the previous work which has an ‘Author/Title Index’ instead.

In my review of the prior work, I mentioned a number of points, many of which recur with respect to the present work (see Phang (1987) 29 Mal LR 133, especially at 134-135). Some, such as the difficulty of distinguishing the quality of the various articles, are inevitable. A short synopsis of each piece would, of course, have been ideal, but extremely time-consuming (but *cf* the *Legal Journals Index*). One possible alternative approach might be to enlist the aid of experts in each field. This would, it is suggested, really enhance the value of the work many times over. As things now stand, the reader is left to guess at the possible significance of each entry, the actual value of which can only be accurately gauged upon actual reference to the published piece itself. On a related note, it might be useful to include, in the next edition, the actual range of pages of each piece. This is of course but a rough guide at best, particularly since (for example) many perceptive pieces are actually quite short. However, some pieces are in fact summaries (particularly of legislation) that are clearly intended to only give the reader a general idea of the law itself; this is particularly true of the summaries in both the *Singapore Law Gazette* and the *Singapore Academy of Law Journal* (under the sections “Legislation Update” and “Singapore Legislation”, respectively). A preliminary note might, perhaps, be added in a future edition to provide some general guidelines to the reader, particularly in clear-cut situations (in this regard, perhaps consultation with the respective editorial boards of the journals concerned could provide the requisite confirmation, especially in situations of doubt).

A second point I mentioned in my previous review was the fact that there were “many articles on Singapore and Malaysia that appear in various books, notably

in collections of essays”, and suggested that “[w]hilst not coming strictly within the purview of the Index itself, ... these articles and essays ought to be included in subsequent editions of the Index for they constitute a valuable contribution to the local legal literature indeed” (see Phang (1987) 29 Mal LR 133 at 135). It is very unfortunate that this suggestion was not taken up in the present work and many illuminating articles and essays continue (apart from personal knowledge or other fortuitous circumstances) to be lost to the local legal community.

On a related note, given their relative numbers, it is suggested that books and monographs on Singapore and Malaysian law could also be usefully included and the title of the work amended accordingly to take into account such an additional category. In this regard, I have resiled from my views expressed in the earlier review (see Phang (1987) 29 Mal LR 133 at 135, note 9). Indeed, I would go further and suggest that *unpublished* works may also be usefully included. My previous views were based largely upon pragmatic considerations of accessibility, but on further reflection, insofar as unpublished theses and academic exercises at least are concerned, the listing would not be very lengthy to begin with. Many theses and academic exercises are in fact extremely valuable for a variety of reasons: ranging from an in-depth survey of a particular area of the law to empirical studies that might even aid policymakers in government. It would, it is suggested, be no onerous task to obtain updated lists of these theses and academic exercises from the various universities in Singapore and Malaysia. Finally, although somewhat less important, it is suggested that it might also be useful to list book reviews (which is, in fact, a staple entry in most leading indexes). What, then, of the title of the present work? It is suggested that if strict accuracy in the title be required, then the title of the work could be amended accordingly.

On a much more minor note, it is unfortunate that contributions to the (unfortunately) shortlived journal of the Malaysian and Singapore Law Students’ Society in the United Kingdom entitled *Fiat Justitia* continue to be absent from the present work as well (see Phang (1987) 29 Mal LR 133 at 134). Whilst on minor points, it is hoped that the editors could systematize the ‘Author Index’: though faithful to the precise names utilized in each piece, very occasionally, authors who have used different versions of their name are listed as different people altogether and there is also the equally occasional lapse when an author is listed under another part of the name instead of the surname; it is hoped that the very minor oversights in this regard will be rectified in a future edition.

More significantly, the present (unlike the prior) work does not contain entries of articles on Singapore and Malaysia appearing in *foreign* periodicals. It is of course true that such entries are not strictly within the scope of the work as encompassed within its title. However, this surely cannot be an insuperable objection if there exists a sufficiently substantive body of work on local law that ought to be included (in this regard, the title of the work could be amended accordingly, a point already mentioned above). A cursory check on the CD-ROM version of the *Index to Legal Periodicals* did in fact reveal a very substantial body of work on various aspects of Singapore and Malaysian law dating from 1981 to the present (slightly over a hundred pieces were found, some of which were written by local academics, many of which were very interesting, and all of which covered a very diverse range of topics). Indeed, with the ease of electronic database facilities, the assembling of such work is extremely fast and accurate, and it is thus suggested that these works be included in the next edition both on grounds of substantive merit as well as ease of retrieval. On a somewhat related note, it may be queried whether works by *local authors* in *foreign* periodicals ought also to be included, *regardless* of the nature of the subject matter concerned. On a strict approach, this ought not

to be done on the basis that the criterion for inclusion is *content*-based. It may, however, be argued that many of these pieces touch on areas of law that are also of local application; for example, articles on developments in English common law and equity are also of potentially local application since English law is in fact the basis of the local legal systems and, so also, many articles on international law are also of potential applicability. In addition, there would be very few problems obtaining the relevant data since this would, presumably, only entail writing to the various local universities for the necessary information.

There is also the question of future updating. This will, presumably, follow the approach adopted in the series generally, *viz* the reissue of bound update volumes on a regular basis (it is understood, though, that in the meantime, new articles will be noted in the yearly supplements at the end of each subject heading). This would, in turn, entail increased costs and it is hoped that the publishers will price the update volumes reasonably, particularly in the light of the relatively less onerous task of assembling the relevant material. This last mentioned point may, however, not hold good if the assistance of experts in the various fields is enlisted, as suggested above. But if this should become an eventuality, it is suggested that there would be an enhancement of the work that would be well worth any extra charge that would be levied.

In summary, this is a volume that can be usefully referred to in both the academic as well as practical spheres. Production-wise, it is handsomely produced (with, it should be added, a clear and systematic text as well as layout) and, although (as already mentioned) part of *Mallal's Digest*, can in fact be utilised on its own. The categories, briefly described above, are clear and arranged in alphabetical order throughout; there is therefore absolutely no problem in utilising the work itself. Thus, any potential purchaser daunted by the price of the entire series can settle for this individual volume instead. In this regard, it is noteworthy that the present volume costs only S\$20 more than its predecessor which, taking into account the present value of money over a decade, as well as the additional material incorporated, is quite good value indeed. It is, however, hoped that the already sterling quality of the present work can be further enhanced in the various ways suggested above.