THE LAW OF ADVOCATES AND SOLICITORS IN SINGAPORE AND WEST MALAYSIA BY TAN YOCK LIN (2ND EDITION). [Singapore: Butterworths Asia. 1998. cxiv + 1025 pp (including index). Hardcover: [$298.70] (inclusive of GST)]

THERE are many types of book on the legal profession. Some are "jolly good reads" (such as David Pannick's *Advocates*, 1992, OUP); some are as fun as swallowing saw-dust (the imagery is not mine but I forget whose); some are historically oriented (and there are many that fit this category); and some concentrate on the ethical dimension (a big thing in the United States). It is difficult to pigeon-hole Professor Tan Yock Lin's *The Law of Advocates and Solicitors in Singapore and West Malaysia* (2nd ed, 1998, Butterworths) as its approach is somewhat unique.

The writer is famously known for having his finger in many legal pies. His expertise ranges from the procedural to the substantive, from the civil to the criminal, and from the domestic to the private international. The diversity of his interests is reflected in the book presently under review, which is now in the second edition. The author has brought together, in one convenient volume, the legal rules which directly impact, in one way or another, on the legal profession. These rules belong to a large number of categories, including procedural law, agency law, contract law, trust law, tort law, and evidence law. It is not just a book on the "law" strictly so called; it deals also with professional ethics (in chapter 11). But as most of ethical rules have statutory force, the title of the book is not misleading. That the book crosses so many subject boundaries makes it difficult to write, and it is made doubly difficult by the fact that it discusses the position, not only in Singapore, but also in West Malaysia. I must confess that I needed some persuasion before agreeing to write this review. I knew (from past use of the first edition) that it covers many topics of which my knowledge was superficial. My fear proved well-founded. Accordingly, many of my comments have to be general in nature, touching on matters of structure and arrangement.

To say that the book has grown is an understatement. It started life with the last page numbered 458; now, it ends at page 1025. The length is more than doubled. This is quite understandable. There is a new chapter on legal professional ethics and an astonishing number of developments has taken place since the publication of the first edition in 1991. Very substantial revisions – and thus plenty of work – had to be done. Unfortunately for the reviewer, the preface does not highlight

or contain a summary of these revisions. The Legal Profession (Professional Conduct) Rules 1998, GN S156/98, came too late, as Professor Tan acknowledges, to be fully considered but he was able to include comprehensive references to them. (Readers will find a note by Professor J Pinsler on that legislation in the present issue of this journal.)

The book has eleven chapters. They deal with the following in the same order: the history of the legal profession, admission procedure, the rights and privileges of an advocate and solicitor, solicitor's retainer, her duty of care, the solicitor as a fiduciary, legal professional privilege, the status of an officer of the court, remuneration, professional discipline and legal professional ethics.

The first chapter gives a brief historical introduction to the development of the legal profession in England, and in Singapore and Malaysia. It contains valuable historical information, some of which are not in the first edition. Perhaps, if only to benefit the future historian, some of the sources could have been more fully stated (*eg*, footnotes 25, 26 and 35). The second chapter deals with admission to the bar, including re-admission and the *ad hoc* admission of the Queen's Counsels. But it goes beyond what the title suggests: the procedure and law on practising certificate and the appointment of Senior Counsel are also covered in this chapter. The Committee for the Supply of Lawyers made its report about 2 years after the publication of the first edition of this book. The report heralded many legislative changes which rendered out-of-date a substantial portion of the corresponding chapter in the first edition. That the law on admission has become much more complicated is evident in the substantive increase in length of this chapter. The present up-to-date and detailed account of the law will be much appreciated by those who need a quick and reliable guide.

Chapter 3 is entitled "Rights and Privileges". (The two terms are used in a general way.) The privileges of an advocate and solicitor, and of an "authorised" person as defined in the Legal Profession Act (Cap 161, 1994 Rev Ed), which are conferred by Part IV of the Act form the first major component of this chapter. The privileges may be exclusive (*eg*, right of audience) or non-exclusive (*eg*, administration of oaths). Incidentally, in relation to the administration of oaths, the author may wish to note that the recent Commissioners For Oaths (Amendment) Rules 1998, GN S 439/98 has now made it possible for the advocate and solicitor who is appointed as a commissioner of oaths to administer the oath not only to a deponent who speaks and understands the English language but also to a deponent who speaks another language or dialect which the advocate and solicitor is proficient in. This would probably go some way towards relieving the workload of the commissioners of oaths stationed at the courts. The chapter is not confined to the privileges conferred by the said Part IV. It deals also with privileges arising from common law such as, to use the terms as they appear in the headings, "privilege from arrest" and "privilege from defamation". In those contexts, the term "privilege" seems to refer to an immunity; this does not appear to be what the term is intended to mean when it is used earlier in the chapter. If further increase in the number of pages can be tolerated, clarification of the concepts of "right" and "privilege" might be helpful here (*cf* Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 1964, 3rd printing, Yale UP). Some of the topics covered in chapter 3 would, one might suggest, be more appropriately placed separately. Some of such topics – *eg*, legal aid, professional self-regulation, pre-emptive powers of the law society, compulsory professional indemnity – are not obviously related to "Rights and Privileges"; while others – *eg*, the ban on touting, and the recent restrictions imposed on sole practitioners – seem antithesistic to "Rights and Privileges".

Chapter 4 is on "Solicitor's Retainer". It discusses the contractual aspect of the

retainer, and the incidents of a retainer, in particular, on the agency powers that flow from it. But the topic of remuneration is to be found further afield, in chapter 9. The ratification of unauthorised commencement of action is discussed under the heading "Ratification of unauthorized retainers". The point may be made, but it is somewhat trivial, that what is unauthorised is the commencement of action, and not the retainer as such: it is after all possible to retain a lawyer without giving her authority to sue just yet. The duties imposed on the lawyer by the substantive law of obligations and trust law are discussed in chapters 5 and 6 respectively. Important cases such as *Chong Yeo & Partners* v *Guan Ming Hardware & Engineering Pte Ltd* [1997] 2 SLR 729 and *White* v *Jones* [1993] 3 All ER 481 are given comprehensive treatment (at pp 330-334 and 348-350 respectively). But the controversial nature of the difficult House of Lords decision in *South Australia Asset Management Corp* v *York Montague Ltd* [1996] 3 All ER 365 (on measure of damages relating to negligent statement, discussed at pp 357-358 and 398-399) ought perhaps to be more fully highlighted: see *eg*, Stapleton, "Negligent Valuers and Falls in the Property Market" (1997) 113 LQR 1; McLauchlan, "Negligent Valuer Liability: The Paradox Remains?" (197) 113 LQR 421; Wightman, "Negligent Valuations and a Drop in the Property Market: the Limits of the Expectation Loss Principle" (1998) 61 MLR 68.

If it can be said, in a very broad way, that chapters 5 and 6 (and one might add, 7, more on which later) are about the lawyer's duties to the *client*, then, it can perhaps also be said that chapter 8 is about the lawyer's duties to the *court* while chapters 10 and 11 are about the lawyer's duties to the *profession*. (But this way of putting it is admittedly not very precise. For instance, as discussed in chapter 11, the profession would expect its members to behave in a certain manner towards their clients. These duties can be said to be owed to the client, thus belonging to the first category. But it can be said that they are more appropriately seen as arising from the expectations which the profession may legitimately have of its members, and hence should fall under a separate category.)

The duty not to disclose confidential information is a matter of substantive law (see pp 433 *et seq*), the law of evidence (see chapter 7), and professional ethics (see pp 952 *et seq*). It is perfectly understandable why these various dimensions of the duty are discussed separately. Whilst the duty differs in features according to its source, the family resemblance is undeniable. Exactly how the three aspects of the duty cohere, or ought to cohere, is still very much an academic puzzle.

The discussion on legal professional privilege in chapter 7 is the most comprehensive local treatment to be found on the subject. The heading is underinclusive as it covers not just legal professional privilege (encompassing what is sometimes called the litigation privilege) but also the "without prejudice" privilege. The scope of legal professional privilege as it is provided for in the Evidence Act has not been carefully considered by local cases: indeed the number of relevant local cases are extremely few. Hence, there is much room for argument and differences of opinion. On many issues, Professor Tan has not hesitated to offer his views. And his views, as always, are very well-considered and deserve careful attention, whether or not one agrees with them. I remain unconvinced, and neither, so it would seem, is Professor Tan totally committed to the view, that the source of the litigation privilege can be found in the second limb of section 128(1). *Wheeler* v *Le Marchant* (1881) 17 Ch D 675 is cited after the proposition that the litigation privilege was "not unknown" at common law at the time Stephen drafted the Evidence Act but it may be noted that the Indian Evidence Act (on which ours was based) came into being in 1872, which was nearly a decade before *Wheeler* v *Le Marchant* was decided. There are admittedly hints of the litigation privilege in the cases before

1872: the earliest seems to be *Lonsdale* v *Heaton* (1830) You 58; but it was by no means an established rule until much later. Our Court of Appeal recently had an excellent opportunity in *Brink's Incorporated & Anor* v *Singapore Airlines Ltd & Anor* [1998] 2 SLR 657 to provide some guidance on this point but disappointingly failed to do so; it applied the English common law, without even mentioning the Australian authority which has adopted a different position, and without any reference to the Evidence Act. The case was unfortunately reported too late for mention in the book; otherwise we would have had the benefit of the writer's views on the decision.

The first edition of this book has already gained a reputation (judging by, amongst other things, its citation in court). This second edition will undoubtedly fortify that reputation. For reasons mentioned earlier, this is a difficult book to revise; Professor Tan is to be congratulated for accomplishing the task most admirably.

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