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BOOK REVIEWS

CIVIL JUSTICE IN SINGAPORE by JEFFREY PINSLER [Butterworths, 2000, lix + 612 pp (including index). Hardcover: $S295 + GST]

DESPITE the title *Civil Justice in Singapore*, Associate Professor Jeffrey Pinsler's latest book is not a crusading discourse on the dispensation of justice in Singapore. This book is a study of "the development of the courts and civil practice", an area which is very much Mr Pinsler's *forte*. Unlike his other treatises in this field, Mr Pinsler has taken a historical approach here, in line with Butterworth's series on *Developments in the Course of the 20th Century.*

One cannot summarise the book better than what the author himself has done in the preface. The chapters begin with the development of the court's jurisdiction and powers and then move into the finer details of procedure. The 1996 unification of the rules of the Supreme Court and the Subordinate Court earned a specific chapter. Some passages in this chapter are, however, repetitive of topics discussed in earlier chapters, *eg,* Order 34A, rule 1, pre-trial conferences, extensions of time by consent and some matters relating to the trial. Inevitably, in a book of this nature, there are discussions on the development of rule-based procedure such as pleadings and discovery. Still, topics which are developed by case law, *eg*, injunctions, examination of witnesses and extension of time, are given due treatment.

In each chapter, Mr Pinsler faithfully starts from the origin of the subject, which in most cases lies in 19th century colonial Singapore, and traces its evolution to the present day. While the digestion of every rule and amendment of the last century is not for the faint-hearted, Mr Pinsler does manage in many cases to identify a trend or the thought behind a certain rule or principle of law. In some instances, practitioners should find such information useful where a mere literal interpretation of a rule is insufficient to press home a point. In others, the predecessors of the current law are but fossils buried under so many layers of amendments. In some topics, it could have made easier reading for the current position to be stated first or highlighted, so that an impatient reader can focus on what he needs quickly.

It is not a mechanical reporting of the rules but the extensive commentary on policy issues that showcases Mr Pinsler's grasp of the subject. For example, his chapter on discovery is revelatory, particularly in the context of discovery against a non-party and Order 24, rule 7A. So are the chapters on pleadings and on the Order 11 grounds for service out of jurisdiction. Likewise, the discussion on irregularities of process and non-compliance with time limits is thought-provoking. It is also necessary in the light of the proliferation of "unless orders" and the consequential increase in cases of non-compliance with peremptory orders.

With an ambitious title like *Civil Justice in Singapore*, one might perhaps hope to gain an overview of how the law has served the cause of justice over the years. That is apparently not the purpose of this book, which has a predominantly utilitarian

flavour. This may not be a bad thing, as a more macroscopic approach could make it less useful to practitioners.

Law, like philosophy, does not lend itself to obvious progress over time, unlike science and technology. A Ford "T" model is a quaint but hopelessly inferior car next to today's automobiles. This degree of improvement is not so easily apparent when one compares a rule of procedure in the 19th century with its evolved descendant today. Therefore, if one hopes to find in Mr Pinsler's treatise some reassurance that the rules of procedure today are more "just" than those at the turn of the century, one might be disappointed. Certainly, the rules have evolved with the times, much like ideas, ideals and even, dare it be said, fashion. The current rules may be apt for our times, but there is no yardstick by which to determine if justice is better served than in the past.

To paraphrase Bacon, a system of justice might address the following concerns: by what means laws may be made certain, how the rights of the individuals are to be balanced with the wider interest of the state or society, what is the best way keep procedure from being too complex, and whether the rules are to be rigourously applied, or to be mitigated by equity or good conscience. In a modern context, one might ask how the mechanism of civil procedure can be kept from being too unwieldy and yet sophisticated enough to ferret out the truth in disputes. One may also legitimately ask for a level playing field between both rich and poor litigants.

How these issues have been resolved, and in which way the scale has tipped, are not always apparent despite Mr Pinsler's depth of scholarship. His concluding chapter (Chapter 15), and even the penultimate chapter, do help to give us an overview of reforms. The reforms have not always grappled with fundamental questions of jurisprudence.

Sometimes, it is not even possible to see a guiding light. In the topic on the inherent jurisdiction of the Court, no general principle emerges beyond its purpose to do justice and prevent an abuse of process. One cannot predict from the generous body of case law discussed where this concept is heading. As an example, while *The Nagasaki Spirit* [1994] 2 SLR 621 and *Singapore Press Holdings* v *Brown Noel Trading Pte Ltd* [1994] 3 SLR 151 are discussed and explained on their respective facts, these two cases were not and probably could not be fitted into a common formula. Mr Pinsler recognises the uncertainty, as he takes the view that "the nature and scope of the inherent power of the court has not always been understood in Singapore and Malaysia."

This is not to say that Singapore law has been stagnant. Various parts of the procedural engine are constantly fine-tuned. Mr Pinsler's book highlights many areas where the position in Singapore no longer corresponds to that in England (even before the Woolf reforms in England). Still, Singapore has not seen it fit to commission a comprehensive study on access to justice, such as that undertaken in England to take a fresh look at the entire set-up and the rationale behind centuries-old concepts. It is true that Singapore has already moved ahead with some of the reforms now taking place in England, *eg*, case management by the Court, the unification of the rules of various courts and the promotion of alternative dispute resolution. Nonetheless, the Woolf reforms do look at a wider scope of things, and indeed their overriding objective is that a case is dealt with "justly".

The landscape of civil procedure in Singapore has in the last decade been shaped by three dominant themes: speed, Court initiative and technology. Singapore is a pioneer in the use of electronic filing technology in courts. There have been substantive changes to the rules and to the administration of justice to make the system more efficient.

Mr Pinsler manages to highlight the emphasis on speed in Chapter 4, particularly in a topic devoted to "Rules and Related Measures to Speed Up Court Proceedings". He discusses the problems of delay and how they have been solved. Mr Pinsler addresses the various forms of alternative dispute resolution which have been institutionalised and encouraged as a means to combat backlog, such as mediation and the Subordinate Courts' dispute resolution procedure. At the same time, Mr Pinsler has included a section calling for a balance between expedition and correct decisions. Few would find fault with his eloquent suggestion that:–

> Vital though it is, the acceleration of the legal process must always be incidental to the attainment of justice. Efficiency in the administration of justice has the distinction of being a worthy and loyal servant of justice because relief is not delayed. But a servant is all that it is.

Elsewhere, Mr Pinsler informs us that Order 34A, rule 1, which empowers the court to "make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter" is a key reform intended to transfer control over the pace of proceedings from the parties to the courts. Mr Pinsler does an admirable job of explaining how Order 34A, rule 1 goes beyond the Court's inherent jurisdiction. It enables the Court to take an inquisitorial role. In the process, he explains briefly the difference between an inquisitorial and an adversarial system. Our rules of court as a whole are built on the adversarial process. He opines that court intervention under Order 34A, rule 1 should not supplant the adversarial process, but be used to promote its efficiency.

Mr Pinsler's views advocate a consistent and cohesive system. One can see his point. Until and unless the adversarial process which we have inherited and practised for generations is scrutinised and discarded, it is important that there be a consistent approach to the concepts flowing from the adversarial process which are embedded in our civil procedure. Certainly, the overriding requirement of justice should temper one's approach to the rules, but there is danger in focusing on one piece of the puzzle without regard to the integrity of the whole.

The book is informative in its comprehensive treatment of rules and at the same time delightfully scattered with gems of philosophical insights. The nature of the subject affords Mr Pinsler rather more freedom with commentary than standard procedural textbooks. This book also contains useful nuggets of information about the management of the courts and other aspects of court procedure which are not strictly legal topics, and therefore do not fall within the confines of a standard textbook. There is no other book of this nature in Singapore, and one suspects, such a book would be rare even in other jurisdictions. *Civil Justice in Singapore* is an invaluable companion to the practitioners' texts and will hopefully be an impetus to more informed debate on the application of the current law.

CHAN LENG SUN