BUTTERWORTHS' ANNOTATED STATUTES OF SINGAPORE: CRIMINAL LAW BY LOUIS D'SOUZA [Butterworths Asia, 2001; xix + 833 pp (including index). Hardcover: S$450]

WHAT are statute annotations about? There are, of course, the venerable *Halsbury's Statutes of England,* and the great Indian works – *Sarkar on Evidence* and *Ratanlal on Crimes*, both of which are well into double digit editions. That they served a valuable function is not in doubt. In the days of pre-electronic legal research, the seemingly mundane task of collecting all the cases interpreting a particular provision was no small matter, even for a relatively small jurisdiction like Singapore. One had either to wade through every issue of the law reports and journals or to be at the mercy of indexers. It is in this tradition that this competent volume of *Butterworths' Annotated Statutes* series is written. All the significant cases are there. If one had a short time in which look up the cases which have interpreted a particular penal statute (the volume includes the major legislation – *eg*, the Penal Code, the Misuse of Drugs Act and the Prevention of Corruption Act), this is the work to turn to.

Yet, with the advent of electronic research, LAWNET, and law reports on CD ROM, the time is ripe for a fundamental rethinking of the rationale of annotated statutes. We are well into the era of full text electronic databases of the law reports. The miracle of search engines spares us much effort in locating the relevant cases. If annotated statutes do no more than tell us what we can find from a cursory exploration of the electronic databases, they are headed for the junkyard, or at best, a museum. What they can do is to give us something more, something value-added, so to speak. We are in controversial territory. The annotator can describe the rationale of a provision or its history. He or she can tell us whether there the cases reveal any consistent theme, or whether the cases can be reconciled with each other. But would this not breach the taboo of editorialising? I think we do not have a choice – a bland collection of case names and one-line descriptions simply do not tell us enough anymore. True, it might be thought to trespass on what was traditionally the realm of text books and law review articles, but any meaningful annotation can no longer ignore academic analysis or exposition of law (which I shall call "academic law"). There ought to be a note of not only the cases, but also of what academic lawyers have had to say. This is not to say that this particular annotation has completely ignored the books – indeed the time-honoured Koh, Clarkson and Morgan, *Criminal Law*, of 1989 is often referred to. Yet does not one expect the steady stream of academic articles on Singapore criminal law appearing in the Singapore Academy of Law Journal and the Singapore Journal of Legal Studies to be noticed as well? I give just one example – strict liability. The annotation contains this pithy proposition: "[t]he defence of mistake is also applicable to strict liability offences; to exclude it, the legislation must use clear language to indicate such intention" (p 309). The situation, as several academic lawyers have pointed out, is much more complicated than that (*eg,* Chan Wing Cheong, "The Requirement of Fault in Strict Liability" (1999) 11 Singapore Academy of Law Journal 98). The truth is the courts employ a number of different approaches, and they are not always consistent with each other. Even if it is thought that to spell out the different approaches would be beyond the remit of an annotation, it would not have taken much more effort and words to point out the (unclear) situation and to refer to the articles written about it.

The neglect of academic law is perhaps symptomatic of a general refusal to indulge in any sort of analysis of the cases, even where they appear to contradict each other flatly. Two examples – both concerning the question of the precise *mens*

rea requirement of the offence of possession (or possession for the purpose of trafficking) under the Misuse of Drugs Act. The annotation in successive paragraphs (on p 187) has this to say: first, that under section 18(2) of the Act, once possession is proved or presumed, "[i]t is for the accused person to prove, on a balance of probabilities, that he did not know the nature of the drugs", and secondly, that "ignorance is a defence only where there is no reason for suspicion and no right and opportunity of examination". A moment's thought will reveal that the two propositions are not reconcilable – either the *mens rea* requirement is (subjective) knowledge, or it is (objective) negligence. One requires proof (or disproof) of what the accused actually knew, the other requires proof of what the accused ought to have known. Yet the two statements appear happily next to each other without explanation. The truth is that the courts have been confused about it, saying now this, and now that (see Michael Hor, "Misuse of Drugs and Aberrations in the Criminal Law" March 2001 Singapore Academy of Law Journal, forthcoming). A second example – section 79 of the Penal Code says that "[n]othing is an offence which done by any person who ...by reason of a mistake of fact ... believes himself to be justified by law, in doing it". The annotator (p 309) has this entry thereunder: "[i]n the case of drug offences, 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to the qualities is not an excuse". No hint is given of how this interpretation of the offence of drug possession can stand with section 79. If I know I have tablets which I think are aspirin, but which turns out to be ecstasy, then section 79 does indeed afford me an excuse – if I (in good faith) believed myself to be carrying aspirin, I believe myself to be justified in law in possessing it. This is flatly contradictory to the comment, which is based on an English decision (albeit approved locally) which never had to deal with a general defence of mistake of fact. Again, the busy practitioner or beginner may not be interested in a prolonged exposition, but does not this surprising anomaly deserve mention?

We need to move on. The kind of annotation which has served us well so far must progress beyond the largely clerical work of collecting and summarising cases. The next step is to provide a brief value-added analysis of the cases, and towards this end, resort to academic law is indispensable. It is the sad tradition of the common law that academic work is not normally considered to be required reading. Things are changing in the common law world. In the United States, Canada, Australia, and even in England, law review articles are assuming greater importance as the supreme courts of the land realise their worth – yet Singapore plods along in blissful ignorance.

Let it not be misunderstood – it is not that the annotation was badly done. The cases are there and they are ably summarised. It is the traditional format or genre that is lacking, and if it is not reformed and reinvented, it will cease to have any lasting impact on Singapore law.

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