

*The Law of Torts in Singapore* BY GARY CHAN KOK YEW [Singapore: Academy Publishing, 2011. c + 783 pp. (including index). Softcover: S\$80.00; Hardcover: S\$250.00]

*The Law of Torts in Singapore* is the first local torts textbook in Singapore. It is published under Academy Publishing's "Law Practice Series", which aims to build up a library of textbooks on important aspects of Singapore law. The present book is a prominent addition to that series. The book is divided into twenty chapters,

with seventeen chapters written by Gary Chan Kok Yew, the book's stated author. Lee Pey Woan contributed two other chapters, and co-wrote one other chapter with the author. These twenty chapters cover the major torts, with an understandable concentration on the tort of negligence. Apart from negligence, the other chapters also cover intentional torts to the person, breach of statutory duty, interference with land, occupiers' liability, interference with goods, defamation, false representations, the economic torts, protection of privacy and malicious prosecution/misfeasance of public office. There are further chapters that deal with more "general" aspects of the law of torts, such as an introductory chapter discussing (in a more theoretical vein) the aims of the law of torts, as well as more doctrinal chapters discussing the various possible parties in a tort action, vicarious liability, and remedies. This is a comprehensive spread of coverage that is similar to other contemporary textbooks of this nature (see *e.g.*, Carolyn Sappideen & Prue Vines, eds., *Fleming's The Law of Torts*, 10th ed. (Sydney: Lawbook Co., 2011)). In the preface, the author states that the book's aim is "to provide a synthesis of the law of torts in Singapore by bringing together... a discussion of Singapore court decisions and statutes as well as reviews and commentaries on these developments, and by tapping on the deep reservoir of English and Commonwealth precedents" (at p. ix). As we shall soon see, the book more than meets this broadly stated aim.

The book was prompted in part by the notable progress made by Singapore courts in building an autochthonous body of law. That in turn may be attributable to the Singapore courts' desire to "build up a large body of local jurisprudence, so that local decisions can be cited first instead of English decisions" (see Chan Sek Keong, "Opening Address by Chief Justice Chan Sek Keong" (Opening Address at the Singapore Academy of Law Conference 2011: Developments in Singapore Law between 2006 and 2010, 24 February 2011), Yeo Tiong Min, Hans Tjio & Tang Hang Wu, eds., *SAL Conference 2011: Developments in Singapore Law between 2006 and 2010* (Singapore: Academy Publishing, 2011) at vi). More specifically, it is true that the Singapore courts have in recent times built up a considerable body of local decisions in the law of torts. For example, whereas the Singapore courts referred to less than 20 local cases in tort cases per year before 1991, that number has risen dramatically to exceed 90 in 2007 (see Goh Yihan & Paul Tan, "An Empirical Study of the Development of Singapore Law" (2011) 23 S.Ac.L.J. 176 at 213). The increasing reference to local decisions in tort cases shows, to some extent, the continuing realisation of the Chief Justice's desire for a large body of local jurisprudence. With the Singapore courts now mandating the reference to local decisions in precedence to foreign decisions (see Supreme Court Practice Direction 1 of 2008), the book under review fills an important gap for the legal profession. While the elucidation of the law of torts in Singapore has been made easier in the past by the many timely and excellent case notes written of the local decisions, the book, which synthesises the relevant Singapore decisions into a single volume, will undoubtedly make that task even easier. Indeed, the Singapore courts have in certain areas departed so much from the established English position that reference to English textbooks would not present a complete picture for the Singapore legal practitioner.

An example of an area of departure that is covered by the book under review is the duty of care in the tort of negligence. As is probably well known, the Singapore Court of Appeal in *Spandek Engineering (S) Pte Ltd v. Defence Science & Technology*

*Agency* [2007] 4 S.L.R.(R.) 100 (C.A.) [*Spandeck*] laid down a two-stage test to ascertain a duty of care, which is itself preceded by the “threshold” requirement of factual foreseeability. Unsurprisingly (and somewhat understandably), the English textbooks do not discuss this case in any great detail, often (if at all) relegating it to a mere footnote. It is especially in such situations that the book under review fulfils a crucial need. In a detailed discussion, the book discusses the *Spandeck* test not only in isolation, but also in the context of the historical background of the tort of negligence and its English common law roots (at p. 74). Indeed, as much as the English position in this area may be understood in terms of its “trilogy” of cases, viz., *Donoghue v. Stevenson* [1932] A.C. 562 (H.L.), *Anns v. Merton London Borough Council* [1978] A.C. 728 (H.L.), and *Caparo Industries plc v. Dickman* [1990] 2 A.C. 605 (H.L.), the Singapore position arguably can be analysed in terms of two distinct trilogies. The old trilogy would consist of pre-*Spandeck* decisions such as *RSP Architects Planners & Engineers v. Ocean Front Pte Ltd* [1995] 3 S.L.R.(R.) 653 (C.A.), *RSP Architects Planners & Engineers v. MCST Plan No. 1075* [1999] 2 S.L.R.(R.) 134 (C.A.), and *The Sunrise Crane* [2004] 4 S.L.R.(R.) 715 (C.A.). The new trilogy, heralded by *Spandeck*, also includes the subsequent decisions of *Ngiam Kong Seng v. Lim Chiew Hock* [2008] 3 S.L.R.(R.) 674 (C.A.) and *Animal Concerns Research & Education Society v. Tan Boon Kwee* [2011] 2 S.L.R. 146 (C.A.) [*Tan Boon Kwee*]. These cases, except for the last, are covered with admirable clarity in the book. This integrated style of discussion makes it possible to understand the various stages of *Spandeck* test in light of local and (relevant) foreign precedents, and also to appreciate the fundamental first principles underlying the decision, which can in turn be used to fuel future reform when necessary. The integrated discussion of local cases does not occur only in the tort of negligence, but occurs in every chapter in the book. Indeed, the integration with the local materials takes place beyond judicial decisions; it also extends to local statutes that affect one’s understanding of the English precedents. For example, in his discussion of the defence of lawful arrest and detention against a claim for false imprisonment, the author refers to s. 64(1)(a) of the *Criminal Procedure Code 2010* (No. 15 of 2010, Sing.) which is the present basis of such a defence in Singapore (at p. 58). Yet another example is the reference to the *Mental Capacity Act* (Cap. 177A, 2010 Rev. Ed. Sing.), which relates to acts done or decisions taken on behalf of a mentally incapacitated person (at pp. 52–54). This has a bearing on the issue of possible defences in an action of battery. Perusing the chapters, one gets the impression that the author and contributor have read almost every single torts case in the Singapore Law Reports. The product of this impressive effort is a useful resource for the legal practitioner.

For the more academically inclined, a significant contribution is the introductory chapter, which provides, *inter alia*, a helicopter view of the various theories underlining the law of torts. The book’s treatment of the various theories is clear and succinct, and affords the reader a quick introduction to those theories. The brief treatment is understandable in light of the main purposes of the book, and indeed the reader is referred to further resources that explain these theories in greater detail. Quite apart from the well-known theories advanced to explain the law of torts, the book also makes a point to relate the development of the law in Singapore to its societal characteristics (at pp. 26–30). In that sense, the book provides a unique perspective that cannot be found elsewhere. The introductory chapter is also useful

from a doctrinal sense because it introduces general concepts prevalent in the law of torts, such as the state of mind required (*i.e.* intention, negligence, or strict liability) and the distinction between omissions and positive acts. The reference to relevant Singapore decisions is especially useful here.

But perhaps the book will find its most grateful adopters in students of the law (which we all are, arguably, but here the reference is to the university student). The book is written in a style that is accessible to the first-year law student. Rather than read an English textbook supplemented by the occasional reference to case notes on local decisions, the student now has a fully integrated option that combines *both* Singapore decisions along with *relevant* foreign authorities. This avoids the unintended confusion occasioned by needing to reconcile the disparate approaches articulated in the English textbooks with the local position. To be sure, English textbooks will remain relevant as alternative sources of information, but the book under review provides a good starting point for the student of *Singapore* law, given its own emphasis on the local law. Also especially useful is the inclusion of charts that summarise the relevant law. These charts lay out the main issues in the topic concerned, before listing out the sub-issues and the various possible resolutions of conflicting views. Their placement at the end of the section being summarised is also helpful: the student (or reader) can refresh his or her mind after going through the text with a simple chart summarising the issues just covered. Lest it be mistaken that the book simply lays out the law, it must also be mentioned that the author and contributor also make it a point to offer their own critical analysis of the present law, so the student is challenged not only by the present state of law, but also in terms of changes for the future. Importantly, to avoid confusing their own views with the present state of the law, the authors helpfully detail any lengthy exposition of their own views in clearly demarcated sections. This avoids the danger present in some textbooks of laying out academic views as though those represent the current state of law as stated by the courts. No matter what one's assessment of the courts' statement of the law to be, there still is a difference between what *is* and what *ought to be*.

If there are any minuses with the book, it may be the lack of an index of the secondary materials referred to. Given the extensive reference to academic materials in the footnotes, it would be immensely useful for the reader to have a bibliography of those materials. Also, perhaps unavoidably, the book imposes a "cut-off" date of 31 December 2010 for the included legal materials, thereby missing out on important decisions in Singapore tort law of more recent vintage, such as *Tan Boon Kwee* in the area of the tort of negligence. Neither is there discussion of the important U.K. Supreme Court decision of *Sienkiewicz v. Greif (UK) Ltd* [2011] 2 W.L.R. 523 (S.C.), which discusses various difficult issues in causation. But given publication deadlines, this is perhaps an unfair criticism, and one can only wait in anticipation for the next edition where all these latest cases would be included. Until then, there are, it must be said, very helpful case comments on the latest Singapore decisions (see *e.g.*, Margaret Fordham, "The Duty of Care of a Clerk of Works—*Spandeck* and Its Aftermath" [2011] Sing. J.L.S. 260). This is perhaps a reminder that case notes nonetheless fulfil a useful function in a holistic understanding of Singapore law, in conjunction with textbooks like the one under review.

By all accounts, the book has exceeded its stated aim. At the most general level, the book promises to be an important repository of legal knowledge in Singapore tort

law. The synthesis of the numerous (and sometimes disparate) Singapore decisions that have accumulated over the years under a single volume is both a tremendous academic achievement and practical contribution. But more than that, the book also promises to be an agent of change, not only by providing a base for Singapore law (which is necessary for reform), but also by suggesting—where appropriate—practical steps which the law of torts in Singapore can further develop. It promises to be a useful resource for students, teachers, and practitioners of the law alike.

**GOH YIHAN**

Assistant Professor

Faculty of Law, National University of Singapore