



Part A Bar Examinations 2015

Criminal Law

Subject Coordinator:
Dr S. Chandra Mohan
School of Law, Singapore Management University

SINGAPORE INSTITUTE OF LEGAL EDUCATION

Part A Bar Examinations 2015

Criminal Law

(Version: 14 May 2015)

INTRODUCTION

The Part A Bar Examination in Criminal Law is designed to test whether overseas law graduates have obtained sufficient knowledge of the fundamental principles of criminal law in Singapore and understand how these are applied within Singapore's criminal justice system. It is important that students keep in mind the relevant local legislative provisions and the court decisions that have interpreted these provisions (see the detailed Reading List).

Singapore's criminal law is codified and is principally contained in the Penal Code which was enacted in 1870. It is based on the Indian Penal Code and its provisions are not always similar to the English Criminal Law which its drafter, Lord Macaulay, sought to improve. Two core values of such a written Code that students must bear in mind are *accessibility* of the penal provisions and *comprehensibility* so that the layman can obtain and understand the law better. The use of 'explanations' and 'illustrations' in the sections, which give examples of the application of the provisions, are unique to the Penal Code. As the Penal Codes of India and Malaysia are similar to our Code, cases from these jurisdictions are of persuasive value in interpreting identical provisions. There are other statutes which provide for specific offences such as the Misuse of Drugs Act and the Prevention of Corruption Act.

Students should begin by examining the history and nature of our criminal laws, their aims and objectives, the purpose of crime control and punishment in society and the various challenges to our criminal justice system. They should then study the various ingredients of a crime as established under the Penal Code, in local legislation and as explained in judicial decisions. This should lead them to the major offences (against the person and property) and the defences to these offences under the Penal Code and some selected statutes.

RECOMMENDED TEXT

Stanley Yeo, Neil Morgan and Chan Wing Cheong
Criminal Law in Malaysia and Singapore
LexisNexis, 2nd ed., 2012

S. Chandra Mohan
Understanding Criminal Law (Cases, Comments and Materials)
LexisNexis, 2014

OTHER REFERENCE BOOKS

Stanley Yeo, Neil Morgan and Chan Wing Cheong
Criminal Law in Malaysia and Singapore: A Casebook Companion
LexisNexis, 2nd ed., 2012

Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009)

Mallal's Penal Law
(Malayan Law Journal Sdn Bhd, 2002)

Chan, Yeo and Hor, *Criminal Law for the 21st Century: A Model Code for Singapore* (Academy Publishing, 2013)

SINGAPORE LEGISLATION (Selected)

Penal Code (Cap. 224, Rev. Ed. 2008)
Criminal Procedure Code (Cap. 68, Rev. Ed. 2012)
Evidence Act (Cap. 97, Rev. Ed. 1997)

LEGAL MATERIALS AVAILABLE ON THE INTERNET

Free access to local statutes is available at <http://statutes.agc.gov.sg> and also at LАWNET. Reports of Singapore, Malaysian and UK cases can be obtained on LАWNET. There is also a wealth of legal literature available on LАWNET, Singapore Law Watch <http://www.singaporelawwatch.sg> and the Singapore Law Blog <http://www.singaporeblog.sg>. Students should also keep abreast with reports of new legislation, court hearings and decisions and legal news.

LIST OF TOPICS

1. **Introduction to the Singapore Criminal Law**
 - Sources of Criminal Law and Procedure
 - Differences between the Penal Code and English common law
 - Interpreting the Penal Code

2. **The Singapore Criminal Justice System**
 - The Singapore Criminal Process
 - (Crime Control v Due Process)
 - Components of the Criminal Justice System
 - Challenges to the Criminal Justice System
 - Burden of Proof

3. **Aims of Punishment and the Sentencing Process**
 - Aims of Punishment
 - Principles of Sentencing
 - Sentencing Options of the Courts
 - Determining the Appropriate Sentence

4. **The Anatomy of a Crime**
 - *Actus Reus*
 - a. Voluntary Acts
 - b. Illegal Omissions
 - *Mens Rea*
 - a. Intention
 - b. Knowledge & Wilful Blindness
 - c. Recklessness
 - d. Rashness
 - e. Negligence
 - Strict Liability
 - a. Rationale for Strict liability
 - b. Approaches of the Courts towards Strict Liability Offences
 - Presumption of *Mens Rea*
 - Exercise of Reasonable Care/Due Diligence
 - Chapter 1V (Penal Code) Approach

5. **Challenges to Establishing a Crime**
 - Coincidence of *Actus Reus* & *Mens Rea*
 - Causation
 - Attempts

6. **Offences Against Property**
 - Robbery/Theft
 - Cheating

- Criminal Misappropriation
 - Criminal Breach of Trust
- 7. Offences Against the Person**
- Hurt
 - Sexual Offences
- 8. Offences Against the Person (cont'd)**
- Culpable Homicide : Murder
 - Culpable Homicide not amounting to Murder
- 9. Accessorial and Joint Liability**
- Abetment and Conspiracy
 - Common Intention
 - Common Object
- 10. Introduction to Criminal Defences**
- Denial of Criminal Liability
 - Burden of Proof
 - General Defences
 - a. Accident
 - b. Mistake of Fact
 - c. Insanity
 - d. Intoxication
 - e. Duress
 - f. Private Defence
 - Special Defences (Special exceptions to Murder)
 - a. Excess of Private Defence
 - b. Diminished Responsibility
 - c. Provocation
 - d. Sudden Fight

READING LIST

The Reading List below gives an indication of the areas that may be examined. The prescribed case books should make the reading of cases and materials easier but if in doubt you should always read the original case report. The texts also contain a more comprehensive list of cases and materials for your further reading and reference. The Reading List also provides a useful guide to reading the cases and materials by raising questions you should consider when reading the cases. It is advisable to read about the topic you are examining before reading the cases or materials. When reading a case, ask yourself how the case provides a better understanding of the issues at hand. You are, however, urged to read beyond the reading list as this will improve your understanding of the law and result in more enlightened answers.

VIDEO COMMENTARIES

For the topics covered in the Reading List, there will be short video commentaries to supplement the reading list and guides. These have been kept short to assist you in focussing on and understanding the subject being discussed. Do not expect the video commentaries to be a comprehensive discourse on the law in the nature of a recorded lecture.

EXAMINATION

There will be a 2-hour open book examination at the end of the course. This means that students will be permitted to make reference to their notes, text books and other materials during the course of the examination.

Dr S. Chandra Mohan

Associate Professor (SMU)

Criminal Law Course-Coordinator

READING LIST

Principal Statutes:

Penal Code [PC], Cap. 224, Rev.Ed.2008
Criminal Procedure Code, Cap.68, Rev.Ed. 2012
Evidence Act, Cap.97, Rev.Ed.1997

Recommended Text :

Stanley Yeo, Neil Morgan, Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*. Lexis Nexis (2nd ed., 2012) [YMC];

S. Chandra Mohan, *Understanding Criminal Law (Cases, Comments & Materials)* Lexis Nexis (2014) [SCM]

[Unless indicated otherwise, all cases, statutes and materials listed below are available online on LawNet or on Westlaw or LexisNexis. For some background information on specific areas of the law and a better understanding of the issues that are raised in the readings, please consult the recommended texts.]

1. Introduction to Criminal Law

- Yeo, Morgan & Chan, *Criminal Law in Malaysia and Singapore* [YMC], Chapter 1, pages 5-21
- Chan Wing Cheong & Andrew Phang, "The Development of Criminal Law and Criminal Justice" in *Essays in Singapore Legal History* (Marshall Cavendish, (2005) **SCM 19-27**

Further Reading

- S Sornarajah, "The Interpretation of the Penal Code" [1991] 3 MLJ cxxix-cxlv

Cases

- PP v Kwan Kwong Weng [1997] 1 SLR (R) 316 at [17], CA
- PP v Low Kok Heng [2007] 4 SLR(R) 183, CA

Questions to Consider

- Are there any advantages in having a codified criminal law like the Penal Code?
- How different is the Penal Code from the English Common Law?
- What principles govern the interpretation of the Penal Code provisions?

2. The Singapore Criminal Process

- **SCM**, Chapter 3; **YMC**, Chapter 1

- Chan Sek Keong CJ, “From Justice Model to Crime Control Model”, (2006) International Chief Justices’ Conference on Criminal Justice Under Stress, New Delhi, India **SCM 145**
- Michael Hor, “Singapore’s Innovations to Due Process,”(2001) 12 *Criminal Law Forum* 25 **SCM 152**
- Chan Sek Keong, New Challenges to the Criminal Justice System in ‘Rethinking the Criminal Justice System of Singapore for the 21st Century’ in *The Singapore Conference : Leading to the Law and Lawyers into the new millennium @ 2020* (2000) **SCM 139**
- The Exercise of the Prosecutorial Discretion : Attorney-General Chambers’ Press Release (20 January 2012) **SCM 125**
- Gary Chan Kok Yew, “Prosecutorial Discretion and the Legal Limits in Singapore” (2013) 25 *SACJ* 15 **SCM 127**

Further Reading

- Michael Hor, ‘The Future of Singapore’s Criminal Process’, [2013] 25 *SACJ* 847 **SCM 159**

Cases

- Took Leng How v PP [2006] 2 *SLR(R)* 70 at , CA **SCM 169**
- Jagathesan s/o Krishnasamy [2006] 4 *SLR(R)* 45 at **SCM 171**

Questions to Consider

- What should the fundamental aims of a criminal justice system be?
- How do we strike a balance between the crime control and due process models?
- What is the Singapore criminal justice system model and is it a satisfactory model?
- What do you consider to be the challenges to Singapore’s criminal justice system to-day?
- What are the components of our criminal justice system and what are their respective roles?
- What is the difference in the burden of proof in a criminal case and a civil case?
- What are the challenges to our criminal justice institutions and how are these resolved: e.g. presumption of innocence, prosecutorial discretion, proof of guilt, rehabilitation and deterrence.

3. **The Aims of Punishment**

- Yeo, Morgan, Chan, *Criminal Law in Malaysia and Singapore* [**YMC**], pages 52-65
- S.Chandra Mohan, *Understanding Criminal Law* [**SCM**], chapter 2
- “General Objects of Sentencing - Sentencing Practice in the Subordinate Courts” in *Subordinate Courts Guide to Sentencing*, volume 3, (3rd edn., Lexis Nexis,2013) chapter 3 **SCM 63**
- Sentencing Options of the Singapore Courts **SCM 78**

[For the sentencing powers and options of the courts generally, see Parts XVI and XVII of the Singapore Criminal Procedure Code.]

Further Reading

- Kow Keng Siong, *Sentencing Principles in Singapore*, Chapter 6: “Sentencing Objectives”.

Selected Cases:

- PP v Kwong Kok Hing [2008] 2 SLR 684, CA **SCM 81** (Factors to be Considered)
- Tan Fook Sum [1999] 2 SLR 523 **SCM 85** (Approach to Sentencing)
- PP v Vitria Depsi Wahyuni (alias Fitriah) [2013] 1 SLR 699, CA **SCM 88** (Sentencing Considerations)
- PP v Law Aik Meng [2007] 2 SLR 814 **SCM 92** (Deterrent Sentencing Policy)
- PP v Goh Lee Yin and Anor [2008] 1 SLR 824 **SCM 104** (Balancing of Interests)
- PP v Mohammad Al-Ansari bin Basri [2008] 1 SLR 449 **SCM 109** (Young Offender)
- PP v Adith Sarvotham [2014] SGHC 103 **SCM 109** (Young Offender)
- Kalaiarasi d/o Marimuthu Innasimuthu v PP [2012] 2 SLR 77 **SCM 117**(CBS)

Questions to Consider

- What is the purpose of punishment?
- What are the main principles of sentencing that are applied by the Singapore courts?
- What factors determine which sentencing principle ought to apply in a given case?
- Do you agree that the dominant choice of sentencing principle in Singapore appears to be a deterrent sentence? Are there any difficulties in applying this principle?

4. Anatomy of a Crime

(A) *Actus Reus*

- **YMC**, Chapter 3; **SCM**, Chapter 4
- a. Voluntary Acts
 - Bratty v AG for Northern Island [1961] 3 All ER 523,HL **SCM 192**
 - Queen v Falconer [1990] HCA 49 **SCM 198**
- b. Automatism
 - PP v Kenneth Fook Mun Lee [2002] 2 MLJ 563 **SCM 213**
 - Abdul Razak bin Dalek v PP [2011] 2 MLJ 237, CA **SCM 216**
 - R v Quick [1973] 3 All ER 347 **SCM 205**
 - AG’s Ref. (No. 2 of 1992) [1993] 3 WLR 982 **SCM 224**
 - PP v Yong Heng Yew [1996] 3 SLR 566 **SCM 242**
- c. Illegal Omissions

- Q v Instan [1893] 1 QB 450 **SCM 246**
- R v Miller [1983] 2 AC 161 **SCM 248**
- Lim Poh Eng v PP [1999] 2 SLR 116 **SCM 257**
- Ngiam Chin Boon v PP [1999] 1 SLR 119 **SCM 254**
- R v Taktak (1988) 14 NSWLR 226 **SCM 264**
- DPP v Santa-Bermudez [2003] EWHC 2908 **SCM 273**

Questions to Consider

- What is the difference between a 'voluntary' act and an 'involuntary' act for purpose of criminal responsibility?
- Consider the meaning of 'automatism' and examples of automatism.
- What is an illegal omission and in what circumstances can a failure to act be considered 'criminal'?

(B) *Mens Rea*

- **YMC**, Chapter 4; **SCM**, Chapter 5
- Chan and Simester, "Four Functions of Mens Rea", (2011) 73 Cambridge Law Journal **SCM 281**

Further Reading

- Chan, "Culpability in the Misuse of Drugs Act: Willful Blindness, the Reasonable Person and a Duty to Check" [2013] 25 SAclJ 110 **SCM 289**

Cases

a. Intention

- Yeo Ah Seng v PP **SCM 295**
- Jai Prakash v State (Delhi Administration) [1991] 2 SCC 32 **SCM 297**

b. Knowledge and Wilful Blindness

- PP v Hla Win [1995] 2 SLR 424, CA **SCM 302**
- Chiaw Wai Onn v PP [1997] 3 SLR 445 **SCM 309**
- PP v Tan Kiam Peng [2008] 1 SLR(R)1, CA **SCM 319**
- Khor Soon Lee v PP [2011] 3 SLR 201, CA **SCM 331**
- Nagaenthran a/l K Dharmalingam v PP [2011] 4 SLR 1156, CA **SCM 337**
- Dinesh Pillai a/l K Raja Retnam v PP [2012] 2 SLR 903, CA **SCM 341**
- Mervin Singh & Anor v PP [2012] 2 SLR 903 [22]-[28] **SCM 344**

c. Recklessness

- Seah Siak How v PP [1965] 1 MLJ 53 **SCM 356**
- PP v Zulkifli Bin Omar [1998] 6 MLJ 65 **SCM 357**
- Madhavan Peter v PP [2012] 4 SLR 613 **SCM 365**

d. Rashness

- Mohamad Iskandar bin Basri v PP [2006] 4 SLR 440 **SCM 371**

- PP v Tiyatun [2002] 2 SLR 246 **SCM 374**
- S Balakrishnan & Anor v PP [2005] 4 SLR 249 **SCM 377**
- PP v Teo Poh Leong [1992] 1 SLR 15 **SCM 382**
- Lim Hong Eng v PP [2009] 3 SLR (R) 682 **SCM 384**
- PP v Hue An Li v PP [2014] SGHC 171

e. Negligence

- Ng Keng Yong v PP [2004] SGHC 171 **CHR 389**
- Lim Poh Eng v PP [1999] 1 SLR (R) 428 **SCM398**
- PP v Hue An Li v PP [2014] 4 SLR 661

Questions to Consider

- Consider the various terms that are used to describe the mental element of a crime in the Penal Code.
- What does the term 'intention' mean and how is a man's intention to be proved in a court of law?
- What is 'wilful blindness', and what is its significance in determining knowledge?
- Distinguish between 'recklessness' 'rashness' and 'negligence' for purpose of criminal liability.
- What is the degree of negligence required in criminal cases in Singapore?

(C) **Strict Liability**

- **YMC**, Chapter 7; **SCM**, Chapter 6

Defences to Strict Liability Offences

a. Presumption of *Mens Rea*

- Sweet v Parsley [1970] AC 132 **SCM 405**
- Lim Chin Aik v R [1963] 1 MLJ 50 **SCM 421**
- PP v Yong Heng Yew [1996] 3 SLR 566 **SCM 242**
- Teo Kwang Kiang v PP [1992] 1 SLR 9 **SCM 417**
- Tan Cheng Kwee v PP [2002] 2 SLR (R) 122 **SCM 428**
- PP v Yue Mun Yew Gary [2013] 1 SLR 39 **SCM 457**

b. Exercise of Reasonable Care/Due Diligence

- Tan Cheng Kwee v PP [2002] SLR (R) 122 **SM 475**
- Chng Wei Meng v PP [2002] 4 SLR 595 **SCM 486**
- MV Balakrishnan v PP [1998] SGHC 416 **SCM 480**

c. Chapter IV Approach [**PC** : ss. 6, 40(2) 79, 80]

- Abdullah v R [1954] MLJ 195 **SCM 462**
- Buergin Juerg v PP [2013] 4 SLR 87 **SCM 465**
- Lie Xing-Long v PP [2014] 4 SLR 1024

- Tan Kheen Wan Iris v PP [1995] 2 SLR 63 **SCM 467**
- Comfort Management Pte Ltd v PP [2003] 2 SLR 67 **SCM 471**

Questions to Consider

- What is 'strict liability' and how is it to be distinguished from 'absolute liability'?
- Are there examples of both in our law?
- What is the rationale for the creation of strict liability offences by Parliament?
- Are there any defences to strict liability offences?
- What has been the approach of the courts to the defences for these offences and why?

5. Challenges to Establishing a Crime

(A) Coincidence of *Actus Reus* and *Mens Rea*

- **SCM**, Chapter 7; **YMC** Chapter 6
- Chan Wing Cheong, "The Requirement of Concurrence of Actus Reus and Mens Rea in Homicide" [2000] SJLS 75 **SCM 519**

Cases

- Thabo Meli & Others v R [1954] 1 WLR 228 **SCM 503**
- Mohammad Radi v PP [1994] 1 SLR(R) 406 **SCM 506**
- Shaiful Edham bin Adam v PP [1999] 1 SLR(R) 442 **SCM 508**
- Wang Wenfeng v Public Prosecutor [2012] 4 SLR 590,CA **SCM 513**

Questions to Consider

- Why must there be a concurrence between the *mens rea* and *actus reus* for an offence to be established?
- In what circumstances can two separate acts with different mens rea be said to satisfy the one transaction rule?
- When would the *Thabo Meli* principle be inapplicable?

(B) Causation

- **YMC** Chapter 5; **SCM** Chapter 7
- R v Smith [1959] 2 QB 35 **SCM541**
- R v Blaue [1975] 3 All ER 446 **SCM 547**
- Ng Keng Yong v PP [2004] 4 SLR(R) 89 **SCM 551**
- R v Maybin [2012] SCC 24 **SCM 528**

Questions to Consider

- How would you distinguish factual causation from legal causation?
- What would be necessary to break the chain of causation?

- Would the intervening act or omission of the victim of the crime be relevant in ascertaining criminal responsibility?

(C) Attempts

- **YMC** Chapter 36; **SCM** Chapter 7
- Thiangiah & Anor v PP [1977] 1 MLJ 79 **SCM 555**
- Chau Kian Kok v PP [1999] 1 SLR(R) 826 **SCM 558**
- PP v Mas Swan bin Adnan [2012] 3 SLR 527,CA **SCM 570**
- Law Society v Bay Puay Joo Lilian [2008] 2 SLR(R) 31 **SCM 566**

Questions to Consider

- How would you distinguish between a preparatory act, an attempt to commit an offence and the offence itself?
- What is the significance of this distinction?
- In what circumstances would an impossible attempt, that is, an attempt to commit an offence that is unlikely to succeed, constitute an offence?

6. **Offences against Property**

- (Penal Code : Chapter XVII);
- **YMC**, Chapters 13-15; **SCM**, Chapter 8

(A) **Theft (PC : Ss 22-24, 378, 379)**

'Intention to take dishonestly'

- Mustaza bin Abdul Majid v PP [2004] SGHC 18 **SCM 594**
- Ward and Anor v PP [1953] MLJ 153 **SCM 599**

'Moves'

- Raja Mohamed v R [1963] MLJ 339 **SCM 599**
- PP v Ramiah [1959] MLJ 204 **SCM 600**

(B) **Robbery : (PC : S. 390)**

- PP v Chia Poh Yee [1992] 2 SLR 804 **SCM 615**

(C) **Criminal Misappropriation : (PC : S.403)**

- Wong Seng Kwan v PP [2012] 3 SLR 12

(D) **Criminal Breach of Trust (PC : S.405)**

'Entrustment'

- Gopalkrishnan Vanitha v PP [1999] 4 SLR 307 **SCM 618**
- PP v Koh Beng Oon [2001] 1 SLR 276 **SCM 625**
- Viswanathan Ramachandran v PP [2003] 3 SLR(R)435 **SCM 637**

'Dominion'

- Lai Ah Kau V PP [1988] 2 SLR 128 **SCM 630**
- Hon Chin Wan Colman [2002] 2 SLR (R) 821 **SCM 640**

'Violation of any Direction of Law'

- Tong Keng Wah v PP [1977-78] SLR (R) 578 **SCM 646**
- Cheam Tat Pang v PP [1996] 1 SLR 541 **SCM 654**

'Express or Implied Contract'

- Cheam Tat Pang v PP [1996] 1 SLR 541 **SCM 654**

(E) **Cheating (PC : Ss 415-420)**

Elements of Offence

- Seaward v PP [1994] 3 SLR(R) 89 **SCM 663**
- Gunasegeram s/o Pavadaisamy v PP [1999] 2 SLR (R) 946 **SCM 675**
- Chua Kian Kok v PP [1999] 1 SLR (R) 626 **SCM 680**
- Rahj Kamal bin Abdullah v PP [1997] 3 SLR 227 **SCM 697**
- Seet Soon Suan v PP [1955] MLJ 223 **SCM 701**
- PP v Li Weiming and Others [2012] 2 SLR 393,CA **SCM 708**

Questions to Consider

- What are the various ingredients of these property offences?
- What is the mischief that the relevant provisions of the Penal Code are aimed at curbing?
- Is the *mens rea* and *actus reus* of each offence easily identifiable?
- How is one offence different from the other and why?
- Is there a common element in all these property offences?
- How are the cases helping to understand the law on property offences?

7. **Offences Against the Person**

- **YMC**, Chapter 11; **SCM** Chapter 9

(A) **Voluntarily Causing Hurt (PC Ss 39, 319, 321 – 323)**

Elements of the Offence

- Sim Yew Thong v Ng Loy Nam Thomas & Ors [2000] 3 SLR(R) 155 **SCM 738**
- Faridah Begam v PP [2001] 3 SLR(R) 592 **SCM 735**
- PP v Kwong Kok Hing [2008] 2 SLR(R) 684,CA **SCM 744**

(B) **Assault (PC : S-351)**

- Mohamed Abdul Kader v PP [1967] 1 MLJ 86 **SCM 721**

(C) **Use of Criminal Force (PC : Ss 349-352)**

- Ng Eng Huat v PP [1988] 1 MLJ 417 **SCM 732**
- Goh Ang Huat v PP [1996] 3 SLR(R) 1 **SCM 725**
- Mohamed Abdul Kader v PP [1967] 1 MLJ 86 **SCM 721**

Questions to Consider

- What is the rationale in having offences against the person as part of the criminal law?
- What are differences between the various offences eg assault, use of criminal force, voluntarily causing hurt? Are these in need of reform?
- Can you identify the *actus reus* and the *mens rea* of these offences?

8. **Offences Against the Person (Continued)**

(A) **Sexual Offences**

- **YMC**, Chapter 12 (from part 7, p.364); **SCM** Chapter 10

a. **Outraging Modesty (PC : S.354)**

(Distinguished from Insulting Modesty (PC : S.509)

“Modesty” – Meaning of :

Rupan Deol Bajaj v KPS Gill [1996] Cr. L.J. 81, SC **SCM 756**

Elements of the Offence

- Teo Keng Pong v PP [1996] 2 SLR (R) 890 **SCM 758**
- PP v Heng Swee Weng [2010] 1 SLR 954 **SCM 760**
- Soh Yang Tick v PP [1998] 1 SLR(R) 209 **SCM 763**
- John Benjamin Cadawaltherayil v PP [1995] 3 SLR(R) 478 **SCM 769**
- Tan Boon Hock v PP [1994] 2 SLR(R) 32 **SCM 777**

b. **Other Sexual Offences**

(Rape, Carnal connection with a girl below 16 years, Sexual penetration of a minor below 16 years, commercial sex with a minor below 18 years [see the cases of *Buregin Juerg* and *Lie Xing-Long above*], outrage of decency)

c. **Absence of Consent**

- PP v Victor Rajoo [1995] 3 SLR(R) 189 **SCM 784**
- Augustine Foong Boo Jang v PP [1990] 1 MLJ 225 **SCM 787**
- Siew Yit Beng v PP [2000] 2 SLR(R) 785 **SCM 790**
- PP v Teo Eng Chan [1987] SLR(R) 567 **SCM 804**

Questions to Consider

- What are the ingredients of the main sexual offences in the Penal Code?
- What constitutes outraging modesty and can the modesty of a male person be outraged?
- Examine the nature of consent to sexual offences under the Penal Code and the circumstances in which it can be vitiated.
- What are the defences that are available to sexual offences under the Penal Code?

(B) **Culpable Homicide**

- **YMC Chapter ; SCM Chapter 11**
- a. Culpable Homicide Not Amounting to Murder (Ss 299,304,PC)
Cases
 - Chung Kum Moey v PP [1965-1967] SLR(R) 421,PC **SCM 831**
 - Tham Kai Yau v PP [1977] 1 MLJ 174 **SCM 834**
 - State of Andhra Pradesh v Rayavarappu Punnayya AIR [1977] SC 45 **SCM 837**
 - Yeap Boon Hai v PP [2010] 2 MLJ 433,FC **SCM 843**
 - PP v Thenegaran a/l Murugan [2013] 3 MLJ 328, CA(M) **SCM 845**
- b. Murder (Ss 300,302,PC)
 - M Sornarajah, “The Definition of Murder under the Penal Code”, [1994] SJLS 1 **SCM 913**
 - Alan Tan Khee Jin, “Revisiting Section 300 (c) Murder in Singapore”, [2005] 17 SAclJ 693
 - S. Chandra Mohan, “The Discretionary Death Penalty for Murder : Guidance at Last” (2015)
<http://www.singaporelawblog.sg/blog/article/87>

Further Reading

- Jordan Tan Zhengxian, “Murder Misunderstood : Fundamental Errors in Singapore, Malaysia and India’s *Locus Classicus* on s300(c)”, [2012] SJLS 7 **SCM 920**

Cases

Section 300(a), PC

- Tan Buck Tee v PP [1976] MLJ **176 SCM 849**
- Mohammed Ali bin Johari v PP [2008] 4 SLR(R) 1058 **SCM 851**

Section 300(b), PC

- Anda & Others v State of Rajasthan AIR [1966]SC 148 **SCM 854**
- Karu Marik v State of Bihar AIR [2001] SC **2266 SCM 856**

Section 300(c), PC

- Virsa Singh v State of Punjab [1958] AIR465 **SCM 857**
- Mohamed Yasin bin Hussin v PP [1974-1976] SLR(R) 596,PC **SCM 861**
- PP v Tan Cheow Bock [1991] 2 SLR(R) 608,CA **SCM 870**
- Tan Chee Hwee & Anor v PP [1993] 2 SLR(R) 493,CA **SCM 875**
- PP v Lim Poh Lye & Anor [2005] 4 SLR(R) 582, CA **SCM 879**
- PP v Astro bin Jakaria [2010] 3 SLR 862 **SCM 886**
- PP v AFR [2011] 3 SLR 653 **SCM 889**

- Kho Jabling & Anor v PP [2011] 3 SLR 634,CA **SCM 899**
- PP v Ellary bin Puling [2011] SGHC 214 **SCM 901**
- Wang Wenfeng v PP [2012] 4 SLR 590,CA **SCM 904**

Section 300(d)

- Tan Cheng Eng William v PP [1970] 2 MLJ 244,CA **SCM 907**
- Kenneth Fook Mun v PP [2007] MLJ 334, CA(M) **SCM 909**

Questions to Consider

- What do you understand by the words “Culpable Homicide”?
- When does ‘Culpable Homicide’ become ‘Murder’ under the Penal Code?
- Is the distinction between the two clear?
- In determining whether or not an accused person has committed murder under the Penal Code, must the court embark upon a subjective or an objective enquiry?
- Do you agree with the Indian decision in *Virsa Singh* that the accused need not know that the intended injury would be sufficient ‘in the ordinary course of nature’ to cause death? Should this not be judged, for example, in the light of the knowledge of the “ordinary man”?
- Is the approach that our courts have previously taken in the interpretation of section 300 (c), a rational one? Has its interpretation caused uncertainty in the law?
- Have recent cases attempted to introduce a sense of rationality in the interpretation of section 300(c)?

9. **Accessorial and Joint Liability**

(A) **Accessorial Liability**

a. Abetment (S 107,108 **PC**)

‘Instigates’

- PP v Lim Tee Hian [1992] 2 SLR(R) 393 **SCM 940**
- PP v Ng Ai Tiong [2000] 1 SLR(R) 1 **SCM 942**
- S. Balakrishnan v PP [2005] 4 SLR(R) 249 **SCM 947**
- Chan Heng Kong v PP [2012] SGCA 18

‘Conspires’

- Er Joo Nguang & Anor v PP [2000] 1 SLR(R) 756 **SCM 950**
- Nomura Taiji&Ors V PP [1998] 1 SLR(R) 259 **SCM 957**
- Hwa Lai Heng Ricky v PP [2005] SGHC 195 **SCM 961**
- Goh Kah Heng v PP [2010] 4 SLR 258 **SCM 966**

‘Intentionally Aids’

- Jimina Jacee v PP [1999] 3 SLR(R) 826 **SCM 969**
- Chan Heng Kong & Anor v PP [2012] SGCA 18 **SCM 972**

- b. Criminal Conspiracy [Ss 120A,120B, PC]
- Kannan s/o Kunjiraman v PP [1995] 3 SLR(R) 294 **SCM 999**
 - DPP v Nock [1998] AC 979 **SCM1008**
 - Emperor v SG Hiremath AIR 1940 Bom. 365 **SCM1013**
 - Quek Hock Lye v PP [2012] 2 SLR 1012, CA **SCM 1001**

(B) Joint Liability

- Chen Siyuan, “The Final Twist in Common Intention” SJLS (2011) 237 **SCM 1107**
- a. Common Intention [S 34, PC]
- Lee Chez Kee v PP [2008] 3 SLR(R) 447, CA **SCM 1027**
 - Daniel Vijay s/o Katherasan and Others v PP [2010] 4 SLR 1119,CA **SCM 1044**
 - Kho Jabing v PP [2011] 3 SLR 634,CA **SCM 1076**
 - PP v Ellary bin Puling [2011] SGHC 214 **SCM 1080**
 - Muhammad Ridzuan bin Md Ali v PP [2014] 3 SLR 721,CA **SCM 1088**
- b. Common Object [Ss 141,142,146, PC]
- Chandran & Ors v PP [1992] 2 SLR(R) 215,CA **SCM 1096**
 - Fan Meng Siong & Anor v PP [2012] 5 MLJ 464, CA (M) **SCM 1105**
 - Thongthot Yonda Art v PP [2002] 2 SLR(R) 412 **SCM 1098**
 - Lee Chez Kee v PP [2008] 3 SLR(R) 447, CA SGCA 20 **SCM 1027**

Questions to Consider

- What are the essential differences between ‘Aiding and Abetting’ and ‘Joint Liability’?
- What do you consider to be the important elements of ‘common intention’?
- Having regard to the latest decisions, have the courts finally resolved the problems in the interpretation of the term ‘common intention’ in section 34 of the Penal Code?
- Distinguish between ‘common intention’ in section 34 and ‘common object’ in section 149 of the Penal Code?

10. **Defences**

(A) General Defences (Selected)

- **YMC**, Chapters 16-26;**SCM**, Chapter 14

Applicability: Penal Code : ss 6, 40(2)

Burden of proof (Evidence Act, Cap 97, ss 103,107)

Cases

- J.A.H.N Gamini & Anor v PP [2011] 3 SLR 689 **SCM 1124**

- Jayasena v Queen [1970] AC 618, PC **SCM 1139**
 - Eu Lim Hok Lai v PP [2011] 3 SLR 167, CA **SCM 1129**
- a. **Accident (PC : Section 80)**
- Kong Poh Ing v PP [1977] 2 MLJ 199, FC(M) **SCM 1150**
 - Ismail Bin Abdul Rahman v PP [2004] 2 SLR 74, CA **SCM 1152**
 - Tan Chor Jin v PP [2008] 4 SLR 306, CA **SCM 1158**
 - Leu Xing-Long v PP [2014] 4 SLR 1024
- b. **Mistake of Fact (PC : Ss 52, 79)**
- Lim Chin Aik v Queen [1963] MLJ 50, PC **SCM 1162**
 - PP v Koo Cheh Yew & Anor [1980] 2 MLJ 235 **SCM 1164**
 - Iris Tan Khee Wan v PP [1995] 2 SLR 63 **SCM 166**
 - Abdullah v R [1954] MLJ 195, CA **SCM 1172**
 - Leu Xing-Long v PP [2014] 4 SLR 1024
- c. **Intoxication (PC : Ss 85 (2), 86 (2))**
- Jin Yugang v PP [2003] SGCA 22 **SCM 1240**
 - Tan Chor Jin v PP [2008] 4 SLR 306, CA **SCM 1243**
 - PP v Astro bin Jakaria [2010] 3 SLR 862 **SCM 1250**
 - Balasubramanian Palaniappa Vaiyapuri v PP [2002] 1 SLR(R) 138 **SCM 1254**
 - Kenneth Fook Mun Lee [2007] 2 MLJ 130 **SCM 1256**
- d. **Unsoundness of Mind (PC: S.84; CPC, Cap 96 : s315)**
- M'Naghten's Case [1843] 8 ER 718 **SCM 1225**
 - PP v Rozman bin Jusoh & Anor [1995] 2 SLR 317 **SCM 1228**
 - PP v Boon Yu Kai John [2004] 3 SLR 226 **SCM 1234**
 - Lim Chwee Soon v PP [1997] 2 SLR 60 **SCM 1237**
- e. **Duress (PC : s94)**
- Mohd Sairi bin Suri v PP [1997] SGCA 57, CA **SCM 1189**
 - PP v Ng Pen Tine [2009] SGHC 230 **SCM 1192**
 - PP v Nagaenthran [2011] 4 SLR 1156, CA **SCM 1196**
- f. **Private Defence (PC : Ss 96-106)**
- Soosay v PP [1993] 3 SLR 272, CA **SCM 1200**
 - PP v Seow Khooon Kwee [1988] SLR 871 **SCM 1207**
 - Sainal Abidin bin Madang v PP [1999] 3 MLJ 497, CA **SCM 1211**
 - Lim Chin Chong V PP [1998] 2 SLR(R) 278, CA **SCM 1209**
 - Roshdi v PP [1994] 3 SLR 282 **SCM 1212**
 - PP v Lim Twe Jeat [1994] 2 SLR 219 **SCM 1216**
 - Tan Chor Jin v PP [2008] 4 SLR 306. CA **SCM 1218**

(B) **Special Defences (Selected)**

- **YMC**, Chapters 27-30; **SCM**, Chapter 15

- a. **Provocation (PC : S.300, Exception 1)**
 - **KM Nanavati v State of Maharashtra AIR [1962]SC 605 SCM1315**
 - **Ithnin bin Kamari v PP [1993] 1 SLR (R) 547, CA SCM 1323**
 - **PP v Kwan Cin Cheng [1998] 2 SLR 345,CA SCM 1327**
 - **Lim Chin Chong v PP [1998] 2 SLR 794 CA, SCM 1335**
 - **Seah Kok Meng v PP [2001] 3 SLR 135,CA SCM 1337**
 - **PP v Sundari Supriyanto [2004] 4 SLR 622 SCM 1341**
 - **Mohamed Ali bin Johari v PP [2008] 4 SLR(R) 1058,CA SCM 1351**
 - **Astro bin Jakaria [2010] 3 SLR 862 SCM 1355**
 - **PP PP v Pathip Selvan s/o Sugumaran [2012] 4SLR 453, CA SCM 1361**

- b. **Sudden Fight (PC : S.300 (Ex. 4))**
 - **Soosay v PP [1993] 3 SLR 272 389,CA SCM 1370**
 - **Mohamed Kunjo v [1977-78] SLR (R) 211,PC SCM 1369**
 - **Asogan Ramesh & Others v PP [1997] 3 SLR(R) 201,CA SCM 1372**
 - **Tan Chun Seng v PP [2003] 2 SLR 506,CA SCM 1374**
 - **Tan Chee Wee v PP [2004] 1 SLR(R) 479, CA at [50]-[76]**
 - **PP v Awang Raduan Awang Bol [2005] 1 CLJ 649, FC(M)**
 - **T Paramasparan v PP [2012] 2 MLJ 545, CA(M) SCM 1381**

- c. **Diminished Responsibility (PC : S. 300, Exception 7)**
 - **R v Byrne [1960] 2 QB 396 SCM 1265**
 - **Mimi Wong & Anor V PP [1992] 2 MLJ 75 SCM 1268**
 - **Chua Hwa Soon Jimmy V PP [1998] 2 SLR 22, CA SCM 1275**
 - **PP v Chia Moh Heng [2003] SGHC 108 SCM 1280**
 - **Zailani bin Ahmad [2005] 1 SLR 356, CA SCM 1283**
 - **PP v Took Leng How [2006] 2 SLR 70,CA SCM 1289**
 - **G Krishnasamy Naidu v PP [2006] 4 SLR 474,CA SCM 1294**
 - **Ong Pang Siew v PP [2011] 1 SLR 606, CA SCM 1299**
 - **Muhammad bin Kadar & Anor v PP [2011] 3 SLR 1205,CA SCM 1306**
 - **PP v Wang Zhijian [2012] SGHC 238 SCM 1308**

Questions to Consider

- Distinguish between the general and special defences in the Penal Code?
- To what offences are these applicable?
- Consider the manner in which each defence may be established.
- Examine critically how the Singapore courts have approached these defences which have been provided by the law.