
When the General Editor of this book, Andrew Phang JA, spoke in the preface of the need for humility on the part of his fellow authors and himself in the preparation of this inaugural indigenous work on contract law in Singapore, he might well have been addressing lawyers generally in their continued learning of the law. Certainly, we took heed of his words as we set out on separate reviews of the book, but it soon became quite obvious that we needed to cooperate to do justice to this important almost two thousand page ‘first effort’. This is an impressive book which will doubtless become the first port of call whenever a point of Singapore contract law is in issue, whether one is drafting an agreement, preparing court submissions or writing an article.

Though ostensibly focused on contract law in Singapore, this book is also a valuable resource for anyone doing research on contract law in the common law world as it contains a rich and varied tapestry drawn from cases and articles in the Commonwealth (as well as in some instances the US in, just to cite two examples, the involved discussion at p 93 of the difference between an offer and invitation to treat in the case of priced goods on display, and self-induced frustration at p 1430). Although a succinct exposition of recent developments in Singapore contract law can be found elsewhere (including in an earlier issue of this journal (A Phang, ‘Recent Developments in Singapore Contract Law — the Search for Principle’ (2011) 28 JCL 31)), this is the book to look to for an exhaustive and general treatment of the subject.

But what is most useful is the analysis of where Singapore courts have departed from what may be seen as established positions elsewhere. This necessity came about because contract is an area rapidly developed by the local courts and where several significant departures from the English position have been seen. The following are some examples. First, the Singapore courts have reiterated their preference, in Man Financial (S) Pte Ltd v Wong Bark Chuan David [2008] 1 SLR 663 and Fu Yuan Foodstuff Manufacturer Pte Ltd v Methodist Welfare Services [2009] 3 SLR 925 respectively, to give literal effect to express termination clauses and parties’ express classification of terms as conditions, unlike the comparatively restrictive English approach in L Schuler AG v Wickman Machine Tool Sales Ltd [1974] AC 235 and Rice v Great Yarmouth Borough Council [2000] All ER(D) 902. Second, the Singapore courts in Foo Jong Peng v Phua Kiah Mai [2012] SGCA 55, Chua Choon Cheng v Allgreen Properties Ltd [2009] 3 SLR(R) 724 and Forefront Medical Technology (Pte) Ltd v Modern-Pak Private Ltd [2006] 1 SLR(R) 927 have steadfastly insisted that terms are implied in fact only where implication is necessary for business efficacy and that the officious bystander test is just the practical mode by which the business efficacy test is implemented. By retaining these two classic tests, the Singapore courts have in effect rejected Lord Hoffmann’s view in Attorney General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988 (Privy Council) that the implication of terms in fact is but an exercise in the construction of contracts. Third, the Singapore
courts in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd* [2008] 2 SLR(R) 623 and *MFM Restaurants Pte Ltd v Fish & Co Restaurants Pte Ltd* [2011] 1 SLR 150 have remained staunchly faithful to the traditional *Hadley v Baxendale* (1854) 9 Ex 341; 156 ER 145 rules on remoteness of damage, thus rejecting Lord Hoffmann’s approach in *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2009] 1 AC 61 which regards remoteness as an issue of construction of contract to determine whether a given type of loss is one which a party has assumed contractual responsibility for. Other differences are alluded to below.

This book is expansive in breadth of coverage yet impressive in detail and depth, starting as it does with an overview of the subject and a description of the book’s scope in Ch 1. This is followed by a comprehensive discourse on the sources and theory of Singapore contract law in Ch 2, including a valuable account of the reception of English law in Singapore. The rest of the book is then structured along traditional lines. This includes offer and acceptance (Ch 3), consideration (Ch 4), intention to create legal relations (Ch 5), terms and exception clauses (Ch 6 and Ch 7), as well as topics which are no longer in vogue in undergraduate law courses such as formalities and capacity (Ch 8 and Ch 9). The discussion moves on to the usual vitiating factors, namely, mistake (Ch 10), misrepresentation and non-disclosure (Ch 11), duress, undue influence and unconscionability (Ch 12). It is heartening to see that an independent chapter is devoted to illegality and public policy (Ch 13), even though the topic has been removed from recent printed editions of some mainstream English student texts. The book then devotes four separate chapters (Ch 16 to Ch 19) to the various means by which a contract may be discharged (including discharge for breach or by frustration), but not before the privity doctrine and its exceptions are examined (Ch 14 and Ch 15). Finally, remedies for breach of contract are discussed over the last four chapters (Ch 20 to Ch 23).

Through a careful reading of the book, those who need to can fully understand the Singapore position (such as with respect to the doctrine of fundamental breach as a rule of construction, and the weakening of warranties as a class of contractual terms independent of conditions and innominate terms, where there is perhaps too comprehensive a discussion of *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR(R) 413). As the authors stress, however, theirs is not an exercise in ‘legal parochialism’ and so those less interested in Singapore law will find that that they can appreciate their own laws more acutely as they go through the book, which is perhaps the *raison d’etre* for the study of comparative law (which importance is acknowledged at p 52).

In a world in which individualism and self-interest has permeated most aspects of life, not least contract law, it is interesting how well the five authors have come together to produce this almost seamless piece of work. At another level, it is also interesting how the book, while retaining its focus on the workings of mainstream contract law, has an underlying theme of fairness in contracting undergirding it. This is not to say that believers in freedom of contract cannot use this book for research into Singapore contract law without considering a different value system altogether. But the book does provide an alternative view throughout, particularly in its discussion of a ‘[b]roader
umbrella doctrine of unconscionability’ (p 895 et seq). Indeed, it is instructive that the first case cited in the book is that of *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100, largely a negligence case affirming proximity as part of a two-stage test to determine the existence of a duty of care regardless of how a case is categorised, which can be seen as the imprimatur for a full development of an autochthonous Singapore law, and particularly the part where the recently retired Chan CJ (at [28]) said that:

The common law is built on interconnected layers of principles, universal and particular, each dependent on and interacting with the other, held together by the overarching goal of fairness and justice.

The closeness of contracts and torts is most evident towards the end of the book, as the reliance measure for damages is there often contrasted with the expectation and restitutionary measures. But this contrast is considered in far greater detail than in other equivalent textbooks as the interesting distinction is made early on in those chapters on damages (p 1495 et seq) between contracts creating absolute obligations (usually the case) and those creating relative ones (such as a contract to take reasonable care). This then opens the door for an exposition of the problems with the ‘but-for’ test of causation in modern tort law, and the modern *Fairchild v Glenhaven Funeral Services* [2003] 1 AC 32 approach where there are multiple sufficient causes of loss. As the authors point out, however, the various tests are fact specific, and it may be that they are not usually of much application in an archetypal contract case. There are consequently times when we wonder if the book has been too ambitious in its reach, as well as the expectation of its readers; but, this may be no bad thing, and is quite consistent with the extract from Chan CJ’s judgment above in terms of how the common law works. In any event, even if the thoroughness of the discussion appears too difficult for a novice undergraduate, it would meet with the approval of advanced readers. The scope of a student text in England and Australia might be trimmed to better reflect the coverage of undergraduate law syllabi, while leaving other researchers to refer to practitioner texts or specialist treatises for other material. However, this book’s detailed coverage is easily justified because it is the treatise on Singapore contract law, aimed at both students and practitioners, and, one might add, academics.

Chapter 2, which lays out concisely the origins of Singapore law, including the reception of English law, is something also found in many textbooks on Singapore law, and yet reads very differently. No other book deals with the issues as comprehensively but, more than that, it confirms the desire expressed early on to take history as an important factor in understanding contract law in Singapore. Drawing on some of the authors’ works elsewhere, there is discussion of empirical studies, for example, with regard to the average number of citations (foreign and local) per reported case in Singapore, and how it has only been since the late 1990s that the latter has caught up with the former. At the end of the chapter, the authors speculate that, perhaps, the theory underlying Singapore law might comprise the balancing of two notions of ‘fairness’; namely, the fairness in upholding the sanctity of contract on the one hand and, on the other, the concern to not simply hold the parties to their
contract where it has been entered into in particularly unfortunate or less than savoury circumstances (p 61).

As a further example of the exhaustive nature of the writing, there is a nuanced separation of bilateral and unilateral contracts with respect to various issues in offer and acceptance. The unconventional nature of that chapter is also evidenced in what is effectively two critical casenotes on Singapore decisions dealing with contract formation in cyberspace, followed by a legislative comment on the Electronic Transactions Act 2010 (now revised and republished as the Electronic Transactions Act (Cap 88, Rev Edn 2011, Singapore)). A legal practitioner would also find very helpful the distinctions drawn between the various forms of estoppels in the chapter on consideration, as well as the different commercial agreements or clauses in which intention to create legal relations might be an issue. At the same time, an academic would find most useful the separate part discussing the Canadian approach towards severance of clauses in an illegal contract. This book will be many things to many people.

There are, however, parts that will tax the most versed of contract lawyers. The chapter on mistake, inherently a complex area, becomes almost an exercise in mathematical reasoning when the authors lay out what they see as the general principles, preconditions and requirements for common mistake at common law. If there is any area that suggests that law is not a humanities subject, it is surely to be found when the authors measure Singapore law against these qualifying tests. And yet, immediately after, the authors argue for the retention of the flexibility provided by the equitable jurisdiction in common mistake cases, which does not appear to have survived the English Court of Appeal decision in Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd [2003] QB 679. They draw support for this from dicta in the Singapore Court of Appeal decision of Chwee Kin Keong v Digilandmall.com [2005] 1 SLR(R) 502 (strictly a case on unilateral and not common mistake) but the fact that they can do so suggests that law is both a science and an art. The common law does not take extreme positions, is pragmatic, and while relatively stable, is still capable of change so long as the door is left open, however small the gap. It clearly can differ across jurisdictions, and could perhaps be described as being in a state of punctuated equilibrium.

It follows from the above that we believe that law students will find the book challenging, as they should, but that they should not worry about the volume of cases referred to and focus instead on the theories expounded. The exhaustive exposition and detailed analysis in this book will certainly be appreciated by readers mining its depths for insightful gems; at the same time, those with more advanced eyesight might have difficulties with the denseness of the print on thin, translucent paper. These have to be seen as necessary defects, if that, as both the student and senior practitioner will have with them a tome of detailed instruction of contract law, and its surrounds, that has been made as affordable and environmentally friendly as possible. This we believe will remain its enduring and distinctive strength even with the increasingly rapid passing of time.

Hans Tjio and Kelry C F Loi
Faculty of Law, The National University of Singapore