

14. CRIMINAL LAW

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I. Introduction

14.1 This chapter reviews the most significant cases decided in Singapore in 2025 which developed criminal law principles. The three parts discuss case law developments relating to: (a) the general part of the criminal law; (b) offences under the Penal Code 1871¹ (“PC 2020”); and (c) offences under the Immigration Act² (“IA 2008”), the Securities and Futures Act³ (“SFA 2006”), the Payment Services Act 2019⁴ (“PSA 2019”), as well as the Enlistment Act⁵ (“EA 2001”).

II. General part of criminal law – test for corporate attribution in criminal context

14.2 The 2025 General Division of the High Court (“General Division”) (three-judge *coram*) case of *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)*⁶ is, at the time of writing, the most authoritative case in Singapore for the test of corporate attribution in criminal cases. In that case, the accused, a foreign company, was charged for corruption offences under s 6(b) of the Prevention of Corruption Act.⁷ The charges alleged that two of the accused company’s employees had corruptly given gratification in the form of loans to an employee of the Land Transport Authority of Singapore. The parties were involved in certain train line construction projects in Singapore. One of the accused company’s employees, Xi Zhengbing (“Xi”), was the general manager and head representative of the accused company’s branch in Singapore. The Prosecution’s case for corporate attribution was based

1 2020 Rev Ed.

2 Cap 133, 2008 Rev Ed.

3 Cap 289, 2006 Rev Ed.

4 Act 2 of 2019.

5 Cap 93, 2001 Rev Ed.

6 [2025] 4 SLR 69.

7 Cap 241, 1993 Rev Ed.

entirely on the roles and conduct of Xi.⁸ It also confirmed at the trial in the District Court that the charges were against the accused company and that “the Singapore Branch was not a separate legal entity”.⁹ The trial court acquitted the accused company of all its charges on the basis that Xi’s acts and knowledge could not be attributed to the accused company.

14.3 Prior to the case, the prevailing test for corporate attribution in criminal cases in Singapore was that set out in *Tom-Reck Security Services Pte Ltd v Public Prosecutor*¹⁰ (“*Tom-Reck*”). Under this test, a person’s knowledge or act(s) will be attributed to a company if the person may be said to be the “directing mind and will”¹¹ of the company. This arises either:¹² (a) when the person is the living embodiment of the company; or (b) if that person’s act(s) are performed as part of a delegated function of the company’s management.

14.4 A complication arose because other rules of attribution had been developed in other jurisdictions. Such rules are:¹³

- (a) The primary rules of attribution – these are rules found in a company’s constitution or law which vest specific powers in bodies such as the board of directors or the shareholders (acting as a whole).
- (b) The general rules of attribution – these are rules that impute to a company its agents or employees’ act(s) within their actual or ostensible scope of authority to the company.
- (c) The special rules of attribution – these are rules which exclude attribution based on general principles of agency or vicarious liability.

14.5 The General Division carefully considered these other rules and generally did not find them attractive for reasons including:¹⁴

- (a) The rules may be overly inclusive, ensnare a company which may have taken all reasonable precautions to prevent

8 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [22].

9 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [9] and [22].

10 [2001] 1 SLR(R) 327.

11 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [27].

12 *Tom-Reck Security Services Pte Ltd v Public Prosecutor* [2001] 1 SLR(R) 327 at [17].

13 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [40]–[58].

14 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [40]–[58].

its agents or employees' illegal acts, and impose an unrealistic standard on a company.

(b) The rules may engender too much uncertainty.

(c) Parliament is the proper authority to determine whether an expansion of the ambit of corporate criminal liability for corruption offences is necessary in Singapore. In particular, pursuant to a recent review of the Prevention of Corruption Act,¹⁵ Parliament had accepted that the Act presently (with the *Tom-Reck* test being operative) “offers sufficient basis for the prosecution of corporate bodies in Court if the facts of the case call for it”.¹⁶

14.6 In the end, the General Division affirmed that the *Tom-Reck* test should continue to apply in Singapore as the appropriate test for corporate attribution in criminal cases. Under this test, the focus remains on whether the wrongdoer can be considered to be the directing mind and will of the company *vis-à-vis* the offending act(s).¹⁷ The court helpfully offered the following additional guidance:¹⁸

(a) The analysis should not be too focused on identifying an “*alter ego*” or an individual who is driving the company but should instead “look at whether the actions of the employee were in truth reflective of the actions of the company”.¹⁹

(b) It may still be possible to attribute the wrongdoer's act(s) and knowledge to the company if the company's directors or senior management were aware that the illegal act(s) were carried out by the wrongdoer but chose not to do anything because the act(s) benefited the company (or at least did the company no harm).

(c) The special rules of attribution may still be applicable in limited circumstances where it is just to do so, bearing in mind the policy and the object of the relevant legislation. This includes instances where regulatory offences are concerned.

15 Cap 241, 1993 Rev Ed.

16 Singapore Parl Debates; Vol 95, Sitting No 70; [4 October 2022].

17 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [59].

18 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [59]–[64].

19 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [59].

14.7 Applying the *Tom-Reck* test to the facts of the case, the General Division concluded that, on the evidence, Xi could not be said to be the directing mind and will of the accused company. Xi was neither the living embodiment of the company nor were his acts performed as part of a function properly delegated by the company's management.²⁰ The Prosecution's main argument was that Xi should be considered the living embodiment of the company because his acts "fell within the appropriate sphere of his responsibility".²¹ The General Division rejected this argument because:²²

- (a) The accused company had an extensive hierarchy and the Singapore branch was merely one of its numerous branches.
- (b) There were strict reporting lines within the accused company.
- (c) Xi did not have the necessary authority in respect of the tender process for the construction projects, and, moreover, a power of attorney issued to him in respect of one of the projects excluded any power of entering into loans.
- (d) There was insufficient evidence to prove that the accused company's top management knew or was complicit in Xi's illegal acts such that his acts could be considered to have received the accused company's tacit approval.

14.8 The General Division left open the issue of whether the aggregation of different acts by and knowledge of more than one associated persons of a company was permissible for the purpose of holding the company criminally liable for their combined effect.²³

14.9 Additionally, this case involved specifically corruption offences. It remains to be seen whether the General Division's position on corporate attribution (*ie*, the *Tom-Reck* test remains the general operative test) applies generally to all other (non-regulatory) offences in Singapore.²⁴

20 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [65]–[78].

21 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [66]–[69].

22 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [65]–[78].

23 *Public Prosecutor v China Railway Tunnel Group Co Ltd (Singapore Branch)* [2025] 4 SLR 69 at [79].

24 On the conceptual distinction between "penal offences" and "regulatory offences" and the potential difficulties in drawing that distinction, see Tai Wei Shyong SC, Deputy Attorney-General, "Sentencing: Public Interest, Policy and Accountability", keynote address at the Sentencing Conference 2022 (1 November 2022) at paras 17–22 <<https://isomer-user-content.by.gov.sg/109/12edec5d-ea01-474d-8eb7->
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III. Offences under Penal Code

A. *Elements of offence of possessing intimate image under section 377BD(2) of Penal Code 1871*

14.10 In the case of *Public Prosecutor v DGH*,²⁵ the two accused persons were charged for various offences under the PC 2020. One of the accused, DGI, was charged for, among other offences, one count of possession of intimate image under s 377BD(1)(b) of the PC 2020, which is punishable under s 377BD(2) of the PC 2020. The General Division noted that there was a lack of case law setting out the elements for that offence.²⁶ It thus took the opportunity to state that the elements for the offence are, broadly speaking, as follows:²⁷

- (a) the accused possesses or has gained access to an “intimate image or recording”²⁸ of the victim;
- (b) the “intimate image or recording” being an image or recording depicting the victim doing a private act, or depicting the victim’s genital or anal region, or, if the victim is a female, her breasts, whether these private parts be bare or covered by underwear; and
- (c) the accused knows or has reason to believe that the image or recording is such an “intimate image or recording”, that his possession of or access to the same was without the victim’s consent, and that such possession or access will or is likely to cause humiliation, alarm or distress to the victim.

14.11 This offence is subject to the defences set out in s 377BM of the same Act.

14.12 In this case, DGI had taken and possessed a photograph of the victim in the shower without the victim’s permission, while the victim was lying unconscious and fully naked. Further, DGI’s act of later deleting the photograph and his explanation for doing so revealed that he knew that his possession of the photograph would be likely to cause humiliation to the victim. The defences in s 377BM also do not apply because there was no reason for DGI to have taken the photograph of

9f73983f2f73/dag-wei-shyong’s-sentencing-conference-2022-speech.pdf> (accessed 1 July 2026).

25 [2025] SGHC 140.

26 *Public Prosecutor v DGH* [2025] SGHC 140 at [258].

27 *Public Prosecutor v DGH* [2025] SGHC 140 at [263]–[264].

28 *Public Prosecutor v DGH* [2025] SGHC 140 at [263]. The term is defined in s 377BE(5) of the Penal Code 1871 (2020 Rev Ed).

the victim in the shower. Accordingly, the court found the elements of the offence under s 377BD(1)(b), read with s 377BD(2), made out against DGI and convicted him of the charge.²⁹

B. *Meaning of “enmity, hatred or ill-will” and “knowingly promotes” under section 298A(a) of Penal Code*

14.13 In *Subhas Govin Prabhakar Nair v Public Prosecutor*,³⁰ the accused was charged for four counts of knowingly attempting to promote feelings of ill-will between racial and religious groups in Singapore under s 298A(a) of the Penal Code³¹ (“PC 2008”). The first two charges involved the accused posting certain messages on a social media platform. The third charge concerned the accused holding up a particular display during a stage play, while the fourth charge arose from the accused posting a video on a social media platform.³² For ease of reference, s 298A of the PC 2008 states as follows:

Promoting enmity between different groups on grounds of religion or race and doing acts prejudicial to maintenance of harmony

298A. Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, knowingly promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups; or

(b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups and which disturbs or is likely to disturb the public tranquility,

shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

14.14 The accused claimed trial to the charges and was convicted by the District Court and sentenced to a global sentence of six weeks’ imprisonment.³³ Dissatisfied, the accused appealed his conviction and sentence. In the appeal, the General Division had to decide on the proper interpretation of the phrase “enmity, hatred or ill-will” as well as the requirement of “knowingly promotes” under s 298A(a).

29 *Public Prosecutor v DGH* [2025] SGHC 140 at [265]–[268].

30 [2025] 3 SLR 295.

31 Cap 224, 2008 Rev Ed.

32 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [4]–[18].

33 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [19]–[27].

14.15 It should be highlighted at the outset that s 298A(a) has since been amended to delete references to religious disharmony, *ie*, the offence now covers only prejudice on racial grounds and to racial groups.³⁴ That said, the discussion in the case concerned other elements of the offence. Therefore, the General Division's interpretation of these elements remains applicable to the current version of the offence.

14.16 As regards the phrase "enmity, hatred or ill-will", the accused proffered two possible (alternative) interpretations:

- (a) Each of the three terms describes a unique aspect of inter-communal hostility and they do not represent diminishing intensity.
- (b) The three terms are synonyms and should be read collectively as requiring proof of detestation or vilification.

14.17 The Prosecution contended that the three terms ought to be interpreted distinctly and that they lie on a sliding scale of negative emotions, with the term "enmity" connoting the strongest negative emotion and "ill-will" connoting the least negative emotion.³⁵

14.18 In gist, the General Division held that:³⁶

- (a) Based on the ordinary and natural meaning of the three terms, although the three terms should be interpreted distinctly, they collectively set out the spectrum of feelings promoted or attempted to be promoted by harmful speech which prejudices inter-group harmony. The threshold to establish feelings of ill-will is lower than that of enmity and hatred, but hatred does not necessarily connote a lower threshold compared to enmity.
- (b) The legislative history of s 298A(a) indicates that the Legislature intended for the term "ill-will" to bear a distinct meaning from "enmity" and "hatred", and it was introduced to broaden the scope of the offence.
- (c) Based on a plain reading of s 298A(a) of the PC 2008, the purpose of the offence is to prevent disharmony between different groups of people in society, specifically on the grounds

34 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [49]. As noted by the General Division of the High Court ("General Division"), as of 1 November 2022, religion related offences in the Penal Code (Cap 224, 2008 Rev Ed) were ported over to the Maintenance of Religious Harmony Act 1990 (2020 Rev Ed).

35 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [34]–[46] and [51].

36 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [52]–[74].

of race or religion (or under the current version of s 298A(a), on the ground of race). The plain reading of the provision does not suggest that there needs to be proof of a threat of violence or public disorder for the offence to be disclosed. This may be contrasted with the offence under s 267C of the PC 2008, which explicitly proscribes communications containing any incitement to violence or which may cause a breach of the peace. Such an interpretation of s 298A(a) is supported by parliamentary debates and case law.

14.19 The General Division also deliberated on whether the fault element of “knowingly promotes” in s 298A(a) required proof of deliberate and malicious intent on the part of the accused to promote racial or religious hostility. The court answered the issue in the negative. This was mainly because the dictionary meaning of “promote” means to further the progress of, or to support actively the passing of. Consequently, the *mens rea* of s 298A(a) is simply to knowingly cause feelings of enmity, hatred or ill-will between different racial or religious groups.³⁷ There was no need for the Prosecution to prove that the accused’s dominant intention was to promote racial or religious hostility.³⁸

14.20 The court then confirmed that in relation to all four of the accused’s charges, the evidence revealed beyond a reasonable doubt that the accused, through his words or conduct, knowingly attempted to promote feelings of ill-will between different racial or religious groups (as the case may be).³⁹ Additionally, the court upheld the lower court’s global sentence of six weeks’ imprisonment imposed on the accused as appropriate and not disproportionate in the circumstances.⁴⁰

C. Elements of grave and sudden provocation under Exception 1 to section 300 of Penal Code

14.21 The Court of Appeal heard the case of *Zin Mar Nwe v Public Prosecutor*,⁴¹ where the accused, a foreign domestic worker, was charged for the murder of her employer’s mother-in-law under s 300(c) of the PC 2008. The accused was alleged to have inflicted multiple stab wounds on the victim with a knife in June 2018. At the trial, the accused raised only diminished responsibility as her defence. The General Division rejected the defence and convicted her of the charge. The accused was sentenced to

37 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [75]–[80].

38 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [100].

39 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [81]–[110].

40 *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [111]–[116].

41 [2025] 2 SLR 330.

life imprisonment (instead of death) because there was reason to believe that she was merely 17 years old at the time of the offence.⁴²

14.22 During her appeal, the accused for the first time raised the defence of grave and sudden provocation under Exception 1 to s 300 of the PC 2008.⁴³ The Court of Appeal agreed with the trial court that diminished responsibility could not be established,⁴⁴ but accepted that the elements of provocation were made out and hence convicted the accused on a lowered charge of culpable homicide not amounting to murder. The court then sentenced the accused to a reduced sentence of 17 years' imprisonment.

14.23 The accused contended that she received grave and sudden provocation. In the morning of the stabbing and on occasions before that, the victim had physically and verbally abused the accused. Furthermore, just moments before the stabbing, the victim told the accused "Tomorrow. You. Go. Agent."⁴⁵ The accused "understood this to mean that she would be sent back to her employment agency and consequently repatriated to [her home country] in debt to her agents".⁴⁶ The accused stated that this threat made her "very angry" and triggered her to stab the victim.⁴⁷

14.24 The Court of Appeal affirmed that there are two limbs to establish grave and sudden provocation under Exception 1 to s 300:⁴⁸

- (a) Subjective limb – the accused must be shown to have subjectively been deprived of self-control as a result of the provocation. This refers to a "sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind".⁴⁹ This limb does not require that the accused ceased mental processing or was acting automatically, nor would the defence be precluded

42 *Public Prosecutor v Zin Mar Nwe* [2023] SGHC 146.

43 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [2] and [62]–[65].

44 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [28]–[61].

45 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [15].

46 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [15].

47 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [15].

48 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [67]. It should be pointed out that the statutory provision for grave and sudden provocation for murder has since been legislatively updated with effect from 1 January 2020 (see Exception 1 to s 300 of the Penal Code 1871 (2020 Rev Ed)). What is relevant for present purposes is that the objective limb of the defence was codified in Explanation 1 of Exception 1 to s 300. There is no substantive change in the law.

49 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [67].

just because the accused was still conscious of his or her actions at the material time.⁵⁰

(b) Objective limb – an ordinary person of the same gender and age as the accused, sharing his or her characteristics as could reasonably affect the gravity of the provocation, would have been so provoked as to suddenly lose his self-control. The provocation must also have been sudden in the sense that the provocation was both unexpected and sufficiently proximate in time to the act that caused death.

14.25 In relation to the subjective limb, the Court of Appeal was satisfied that the accused was deprived of self-control when stabbing the victim. Firstly, the accused offered a coherent and consistent account to the police of how she had lost self-control when stabbing the victim.⁵¹ Secondly, the objective circumstances surrounding the stabbing corroborated that the accused had lost such self-control.⁵² In particular, the accused had inflicted 26 stab wounds on the victim of varying depths and at different parts of the victim's body. The accused had also stabbed the victim without premeditation. The accused's post-killing conduct was also "consistent with the offence having been driven largely, if not wholly, by blind rage and unthinking impulse".⁵³

14.26 As regards the objective limb, the Court of Appeal noted that the victim had abused the accused, at least on the morning of the stabbing, as well as the fact that the accused was a mild-mannered lady who was not prone to temperamental outbursts. Crucially, the court considered that an ordinary person: (a) of the accused's youth and immaturity; (b) facing the challenge of adapting to living and working in a foreign country; (c) concerned with her indebtedness to her employment agent; and (d) with the fear of being repatriated in those circumstances, would have found the victim's conduct so grave and sudden as to lose self-control.⁵⁴ Given that both the subjective and objective limbs were satisfied on the facts, the court held that the defence of grave and sudden provocation had been successfully established.⁵⁵ The court proceeded to convict the accused on a reduced charge of culpable homicide not amounting to murder and sentenced her to 17 years' imprisonment.⁵⁶

50 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [69].

51 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [71]–[81].

52 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [82]–[87].

53 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [84].

54 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [89]–[100].

55 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [101]–[103].

56 *Zin Mar Nwe v Public Prosecutor* [2025] 2 SLR 330 at [104]–[127].

IV. Offences under other statutes

A. *Offence of abetting a marriage of convenience under section 57C(1) of Immigration Act read with section 109 of Penal Code*

14.27 In *Kok Chiang Loong v Public Prosecutor*,⁵⁷ the accused was charged for abetting by instigation a marriage of convenience under s 57C(1) of the IA 2008, read with s 109 of the PC 2008. Specifically, the charge alleged that the accused instructed Goh Khoon Beng (“Goh”), a male Singaporean citizen, to enter into a marriage of convenience with Akhalkatsi Maia (“Maia”), a female Georgia national. The accused was convicted by the District Court and sentenced to ten months’ imprisonment.

14.28 In his appeal against his conviction, the accused raised, among other arguments, that his offence should have been framed under s 57C(2) of the IA 2008 instead. He contended that this was because s 57C(2) already provides a specific offence for arranging or otherwise assisting in arranging a marriage of convenience. For ease of reference, s 57C states as follows:⁵⁸

Marriage of convenience

57C.—(1) Any person who contracts or otherwise enters into a marriage—

- (a) knowing or having reason to believe that the purpose of the marriage is to assist one of the parties to the marriage to obtain an immigration advantage; and
- (b) where any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 10 years or to both.

(2) Any person who arranges or otherwise assists in arranging a marriage between 2 other persons, with the intention of assisting one of the parties to the marriage to obtain an immigration advantage, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 10 years or to both.

⁵⁷ [2025] SGHC 57.

⁵⁸ Section 57C(4) has since been statutorily amended but the amendments do not affect the discussion of the law in this case.

(3) This section shall apply to a marriage entered into whether in Singapore or outside Singapore.

(4) In any proceedings for an offence under subsection (1) or (2), it shall be a defence for the person charged with the offence to prove that, although one purpose of the marriage was to assist a party to the marriage to obtain an immigration advantage, the defendant believed on reasonable grounds that the marriage would result in a genuine marital relationship.

(5) For the purposes of subsection (4), what constitutes a genuine marital relationship is a question of fact and the court shall have regard to all the circumstances of the case in determining the question.

(6) In this section —

‘gratification’ includes —

- (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; and
- (d) any other service, favour or advantage of any description whatsoever;

‘immigration advantage’, in relation to a party to a marriage, means the grant or extension of the validity of any visa, pass, permit or re-entry permit under this Act or the regulations or any order made thereunder for that party or for a child or parent of that party.

14.29 The General Division confirmed that the Prosecution was entitled to frame the accused’s offence under s 57C(1) of the IA 2008, read with s 109 of the PC 2008, instead of purely under s 57C(2). This was because the two offences were not identical in scope. Particularly, the offence of abetment by instigation may be committed by the active suggestion, support, encouragement or stimulation of an offence⁵⁹ (in this case, to enter into or contract a marriage of convenience) whereas the offence under s 57C(2) requires proof that the offender specifically arranged or otherwise assisted in arranging the marriage of convenience. In the accused’s case, it so happened that given the accused’s conduct, both offences may be disclosed against him, but the law is clear that in such cases, it is a matter of prosecutorial discretion as to which charge the Prosecution may proceed with against the accused.⁶⁰

59 *Kok Chiang Loong v Public Prosecutor* [2025] SGHC 57 at [18], citing *Mohamed Affandi bin Rosli v Public Prosecutor* [2019] 1 SLR 440.

60 *Kok Chiang Loong v Public Prosecutor* [2025] SGHC 57 at [17]–[19].

14.30 The accused further argued that because the Prosecution had charged him under s 57C(1) of the IA 2008, read with s 109 of the PC 2008, he was not able to raise the statutory defence under s 57C(4). The General Division noted that the District Court seemed to have taken the view that the accused could avail the statutory defence in this case.⁶¹ The General Division suggested that this may not be a correct interpretation of the law because “[o]n its face, s 57C(4) only applies ‘[i]n any proceedings for an offence under subsection (1) or (2)’ and, as the Prosecution observes, neither Goh nor Maia had sought themselves to rely on s 57C(4).”⁶²

14.31 Nevertheless, the court added that the accused was not prejudiced because the elements of abetment by instigation included knowledge of all essential matters constituting the primary offence. Thus, if the accused could show that he had reasonably believed that Goh and Maia’s marriage would result in a genuine marital relationship (which is the nub of the defence under s 57C(4)), he would have been acquitted of his charge of abetment in any event.⁶³

14.32 The General Division went on to affirm that on the evidence, Goh and Maia had entered into a marriage of convenience, and that all the elements of the charge against the accused were proven beyond a reasonable doubt. It thus dismissed the accused’s appeal against his conviction.⁶⁴

B. *Meaning of “fraud” and the mens rea requirement for offence under section 201(b) of Securities and Futures Act*

14.33 In *Sun Weiyeh v Public Prosecutor*,⁶⁵ the accused was charged for two counts of engaging in acts in connection with the sale of securities which were likely to operate as a fraud under s 201(b) of the SFA 2006. At the material time, the accused was a portfolio manager of various funds. He was alleged to have sold securities at an undervalue from one fund to another in which he held a majority shareholding. He did so while knowing that third parties had placed higher bids for these securities. The District Court convicted the accused of both charges and imposed a global sentence of six months’ imprisonment. The accused appealed against his conviction and sentence. The facts of the case are highly complex, and the ensuing paragraphs will focus only on the General

61 *Kok Chiang Loong v Public Prosecutor* [2025] SGHC 57 at [20]–[21].

62 *Kok Chiang Loong v Public Prosecutor* [2025] SGHC 57 at [22].

63 *Kok Chiang Loong v Public Prosecutor* [2025] SGHC 57 at [22].

64 *Kok Chiang Loong v Public Prosecutor* [2025] SGHC 57 at [25]–[38].

65 [2025] 5 SLR 372.

Division's clarification of the elements of the offence under s 201(b). Section 201(b) of the SFA 2006 prescribes as follows:⁶⁶

Employment of manipulative and deceptive devices

201. No person shall, directly or indirectly, in connection with the subscription, purchase or sale of any securities —

...

(b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, upon any person;

14.34 In the appeal, the General Division had the opportunity to clarify the meaning of “fraud” as well as the *mens rea* requirement under s 201(b) of the SFA 2006. The latter issue arose because the plain words of s 201(b) did not expressly state any *mens rea* requirement.

14.35 On the first issue, the court first noted that s 201(b) criminalised the engaging in any act, practice or course of business which operates or is likely to operate either as a *fraud* or *deception* upon any person. It observed that the terms “fraud” and “deception” were not defined in the Act and there was no clear authority that had decided on the meaning of the two terms.⁶⁷ The accused argued that “fraud” in this context always requires proof of deception with an intent to obtain an advantage for himself or to impose a disadvantage on someone else by such means of deception. This was based on the recently revised definition of “fraudulently” in s 25 of the PC 2020.⁶⁸ On the other hand, the Prosecution submitted that “fraud” was a broader concept which could include dishonest conduct that did not arise from deception. One example would be a director breaching his duty with awareness that it would result in wrongful gain to himself or wrongful loss to others.⁶⁹

14.36 In response, the General Division rejected the accused's interpretation of “fraud”⁷⁰ and offered the following important observations. Firstly, the SFA 2006 criminalises market misconduct and

66 The provision has since been amended to replace the word “securities” with the phrase “capital markets products” (see s 201(b) of the Securities and Futures Act 2001 (2020 Rev Ed)). This amendment does not substantively affect the General Division's holding in this case regarding the meaning of “fraud” and the *mens rea* requirement under s 201(b).

67 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [36].

68 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [37].

69 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [38].

70 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [61(b)].

the legislative object is to protect public investors and public confidence in the market and ensure that the operation of the market is not distorted.⁷¹

14.37 Secondly, s 201(b) is a catch-all provision intended to cover all forms of securities fraud not otherwise caught by other provisions of the Act. It is amorphous and capable of catching a myriad of illegitimate trading practices. It would therefore be unhelpful to fix a precise definition of “fraud”. Previous local cases have similarly cautioned that it is futile to attempt to fix a definition for concepts as amorphous as “fraud”.⁷²

14.38 Thirdly, there appears to be significant overlap between “fraud” cases under s 201(b) and “deception” cases under s 201(b).⁷³

14.39 Fourthly, the definition of “fraudulently” recently revised in the PC 2020 cannot apply here because that definition is expressly stated to not apply to offences outside of the PC 2020. Relatedly, the Penal Code Review Committee had explained that it was reluctant to extend the definition of “fraudulently” beyond the PC 2008 because the term contained composite fault elements that could have different meanings in different contexts.⁷⁴

14.40 Fifthly, where a person (A) is expected to protect or not act against the financial interest of another person (B) and A does certain acts which will cause detriment to B unnecessarily, the situation would be clearly caught under s 201(b). It would be even clearer where B’s detriment occurs concomitantly with A gaining a financial benefit as a consequence of A’s acts.⁷⁵

14.41 On the second issue of the *mens rea* requirement under s 201(b), the General Division first pointed out that both the Prosecution and the accused agreed that the offence under s 201(b) was not of strict liability. However, the Prosecution submitted that the *mens rea* is an intention to do the particular act with knowledge that the act engaged in would likely operate as a fraud. The accused contended that the *mens rea* is an intention to do the particular act with a specific intention to deceive, manipulate or defraud. The lower court held that the *mens rea* was an intention to do the particular act with the knowledge that the act would result in either loss to the investor or financial gain to the offender.⁷⁶

71 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [39].

72 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [40] and [45]–[46].

73 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [42].

74 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [43]–[44].

75 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [47]–[50].

76 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [53].

14.42 The General Division considered the relevant authorities and concluded as follows:⁷⁷

[T]he reality is that a person who commits fraud is invariably also dishonest. The touchstone of fraud is dishonesty and the key question in any given case is whether the accused person acted with an objectively dishonest state of mind. What amounts to dishonesty must be decided on the particular facts of each case. For the purpose of this appeal ... if a person (A) is placed in a position where he is expected not to act against the financial interests of another person (B), it must be dishonest if A were to do an act intentionally with the knowledge that his act would be detrimental to the financial interests of B. In such circumstances ... A knew that his act would likely operate as a fraud. This is even more so if B's financial loss results in financial gain to A or to entities or persons associated with A.

14.43 Applying the above to the facts, the General Division concluded that in respect of both charges: (a) the accused had a duty to act honestly in the circumstances; (b) he was aware of the bids from the third parties; and (c) he had acted dishonestly.⁷⁸ Accordingly, the Prosecution had successfully proven the elements under s 201(b), and the General Division affirmed the accused's conviction for both charges. The court also upheld the lower court's sentence of six months' imprisonment.⁷⁹

C. *Meaning of “carrying on a business of providing payment services” under section 5(1)(a) of Payment Services Act 2019*

14.44 In *Chang Jiunn Jye v Public Prosecutor*,⁸⁰ the General Division had occasion to consider the interpretation of “carrying on a business of providing a payment service”⁸¹ under s 5(1)(a) of the PSA 2019. In that case, the accused was charged with two counts of carrying on a business of providing payment services without a valid licence under s 5(1)(a). The accused, through an acquaintance, Feng Shukun, found out that one Li Xiaona (“Li”) required help in changing a large amount of Renminbi to US dollars. The accused then twice helped Li with cross-border currency exchange and money transfer.⁸² At the trial, the accused did not dispute his involvement in the two transactions. He further admitted that he had financially benefitted from his involvement in the two transactions in the form of profit from the difference in the exchange rates of the currencies.⁸³ His main argument for claiming trial was that he had not carried on

77 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [60].

78 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [62]–[81].

79 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [82]–[90].

80 [2025] 5 SLR 402.

81 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [2].

82 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [4]–[8].

83 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [11].

a *business* of providing payment services. The trial court convicted him of both charges, and sentenced him to a global punishment of six weeks' imprisonment.⁸⁴

14.45 As mentioned, the accused's main defence was that a person is said to carry on a *business* of providing payment services under the PSA 2019 not only when he is willing to provide his services to all and sundry but also where there is a requisite level of system, continuity and repetition in his transactions. In particular, he argued that the two transactions that he facilitated did not have the required level of system, continuity and repetition, and additionally that he had provided the transactions on the basis of friendship between the accused and Feng Shukun.⁸⁵

14.46 The General Division clarified that a person is said to carry on a business of providing payment services under the PSA 2019 if either: (a) there was a system and continuity in the transactions; or (b) the person was willing to provide payment services to all and sundry. The two requirements are disjunctive. In relation to the first test, the court stated that a "system" refers to an organised scheme, which is distinguished from the occasional providing of the service.⁸⁶

14.47 In this case, the accused argued that two transactions would not satisfy the system and continuity test. The General Division disagreed. It held that the assessment of whether there was a system and continuity:⁸⁷

... is heavily dependent on the facts and context before the court, and ultimately, 'continuity' refers to an ongoing and routine series of transactions as opposed to occasional transactions ... [w]ilst it may be unusual, it is conceptually possible for the ... [t]est to be satisfied even where there was only one transaction ...

14.48 The court observed that in this case, although the accused became acquainted with Li only in January 2021, he went on to provide payment services to her on two occasions which were barely a month apart from each other later in January 2021 and then in March 2021.⁸⁸ The close frequency of the transactions indicated that the accused had not provided the service merely on an occasional basis. Moreover, there was continuity because Pt 3 of the First Schedule to the PSA 2019 states that a cross-border money transfer service includes an act of arranging for the receipt of any money from outside Singapore by any person in

84 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [12]–[13].

85 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [14].

86 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [17]–[20].

87 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [26].

88 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [26].

Singapore, and the accused had been wholly involved in the arrangement for such transfer of money.⁸⁹ The General Division therefore upheld the accused's conviction and sentence.

D. *Whether the offence of failing to return to Singapore before expiry of exit permit under section 32(2) of Enlistment Act is a strict liability offence*

14.49 In *Naresh Kumar s/o Nagesvaran v Public Prosecutor*,⁹⁰ the accused was charged for one count of failing to return to Singapore before the expiry of his exit permit under s 32(2) and punishable under s 33 of the EA 2001.⁹¹ The accused was granted an exit permit to stay outside Singapore from 29 January 2012 to 30 September 2013 but he failed to return before the expiry of that period. The accused was convicted of the charge and sentenced to 14 weeks' imprisonment. In his appeal against his conviction and sentence, one argument that the accused raised was that the offence is not a strict liability offence. In particular, he contended that for the offence to be established, the Prosecution must prove that he knew that he was not permitted to stay outside Singapore without a valid exit permit or that he must be aware that his exit permit has expired.

14.50 The General Division (three-judge *coram*) confirmed that the offence was a strict liability offence. On a preliminary note, the court clarified that:⁹²

[T]he approach to construing penal statutes was the same as that for interpreting any other statutory provision, namely, the purposive approach to construction set out in s 9A(1) of the Interpretation Act 1965^[93] ... and elaborated upon by the three-step test in *Tan Cheng Bock* ...

14.51 The prevailing approach in Singapore to ascertain whether an offence for which the provision does not explicitly provide for a *mens rea* requirement is a strict liability offence is the presumption of *mens rea* approach as set out in *Gammon (Hong Kong) Ltd v Attorney-General of Hong Kong*⁹⁴ ("Gammon"). Where an offence-creating provision does not expressly state any *mens rea* requirement, the court begins by presuming that there is *mens rea*, but that presumption may be displaced

89 *Chang Jiunn Jye v Public Prosecutor* [2025] 5 SLR 402 at [28]–[29].

90 [2025] 4 SLR 1068.

91 The version of the provision is substantively the same as that in the current Enlistment Act 1970 (2020 Rev Ed).

92 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [36], referring to the seminal case on statutory interpretation in Singapore, *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850.

93 2020 Rev Ed.

94 [1985] AC 1.

by considering what is known as the *Gammon* factors. These factors include considering whether the offence is concerned with an issue of social concern and public safety, and whether holding the offence as one of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.⁹⁵

14.52 The General Division emphasised that:⁹⁶

47 ... [W]e do not see any contradiction between the presumption of *mens rea* [approach] ... and the purposive approach to statutory interpretation in s 9A(1) of the [Interpretation Act 1965]^[97] as explained in the three-step methodology in *Tan Cheng Bock*^[98] ... In our view, [the presumption of *mens rea* approach] was merely another way of applying the purposive approach in cases of genuine ambiguity within the text and context of the penal provision as to whether it contained any *mens rea* element.

...

49 ... [T]he purposive approach to statutory interpretation and the [presumption of *mens rea*] approach are complementary, with the latter assisting the court in cases of genuine ambiguity where the text, context and purpose of the provision ... provide no clear answer to the question whether *mens rea* has to be proved by the Prosecution. In such cases, the factors listed in *Gammon* ... may serve as tools to assist the court in arriving at the correct purposive interpretation of the statutory provision. However, in most cases, the *Tan Cheng Bock* framework will suffice to arrive at a clear answer.

14.53 The General Division also considered in quick passing whether s 26H(1) of the PC 2020 was relevant in this case in determining whether the offence of failing to return to Singapore before the expiry of his exit permit under s 32(2) and punishable under s 33 of the EA 2001 was a strict liability offence.⁹⁹ It ultimately concluded that because the offence was committed from 1 October 2013 to 6 April 2019, which was before s 26H came into force (on 10 February 2020), s 26H would not apply in this case.¹⁰⁰ As an aside, this author has argued elsewhere that even if s 26H were to apply, it should not be interpreted to mean that if an

95 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [37]–[38]. On the presumption of *mens rea* approach in Singapore, see generally Benny Tan, *Foundations of Criminal Law in Singapore* (Academy Publishing, 2022) at pp 125–136.

96 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [47] and [49].
97 2020 Rev Ed.

98 *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850.

99 Section 26H(1) of the Penal Code 1871 (2020 Rev Ed) states that “An offence of strict liability under this Code or any written law is one where, for every physical element of the offence, there is no corresponding fault element.”

100 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [43].

offence-creating provision on its face does not provide any *mens rea* requirement then that is conclusive of the fact that the offence is a strict liability offence.¹⁰¹

14.54 Returning to the case, the General Division concluded that the offence of failing to return to Singapore before the expiry of the accused's exit permit was a strict liability offence. Referring to relevant passages from parliamentary debates, the court held that:¹⁰²

Given the vital importance of National Service to Singapore's national security and survival, coupled with the role of the exit permit regime, reading a *mens rea* requirement into the [EA 2006] offence would undermine the deterrent effect of [the offence].

14.55 On the facts, the accused had failed to return to Singapore after the expiry of his exit permit. He also failed to show on a balance of probabilities that he had exercised reasonable care to avoid failing to return to Singapore before the expiry of his exit permit.¹⁰³ The court hence upheld the accused's conviction and sentence.

101 Benny Tan, *Foundations of Criminal Law in Singapore* (Academy Publishing, 2022) at pp 125–136.

102 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [50]–[57].

103 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [67]–[89].