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14. CRIMINAL LAW

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I. Introduction

14.1 This review is in three parts. These will examine cases relating to the general part of the criminal law, and cases involving offences under the Penal Code,[1] the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act,[2] the Securities and Futures Act[3] and the Companies Act.[4]

II. General part of criminal law

A. When may Singaporean be held liable for act committed outside Singapore?

14.2 In *Ng Kok Wai v Public Prosecutor*,[5] the General Division of the High Court (the "High Court") considered the issue of when a Singaporean may be held liable for an act committed outside the territory of Singapore which, if the act was committed within Singapore, would constitute an offence here and which the Singapore courts would have jurisdiction to try. In particular, the court clarified the distinction between when a Singapore court has the authority to try an accused person for an offence and when an act committed by an accused person outside of Singapore is rendered an offence under a Singapore law.

14.3 The appellant ("Ng") is a Singapore citizen. In December 2021, he was on board a Bahamas-registered cruise ship in international waters when he decided to break into the adjacent cabin to steal a brassiere, which belonged to a female Singapore Permanent Resident. Upon discovering the missing brassiere, she lodged a police report, and Ng was arrested upon the ship returning to Singapore.[6]

1 Cap 224, 2008 Rev Ed.
2 Cap 65A, 2000 Rev Ed.
3 Cap 289, 2006 Rev Ed.
4 Cap 50, 2006 Rev Ed.
5 [2024] 3 SLR 1516.
6 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [4] and [5].

14.4 Ng was charged with committing theft and house-breaking under ss 380 and 451 of the Penal Code[7] respectively, read with s 180 of the Merchant Shipping Act[8] ("MSA"). At trial, before a district court ("District Court"), Ng did not dispute the factual elements of both offences. Instead, Ng argued that since the offence was committed on a foreign-registered ship on the high seas, and further that ss 380 and 451 of the Penal Code did not have any extraterritorial application, he could not be held criminally liable in Singapore.[9]

14.5 The trial judge opined that ss 380 and 451 of the Penal Code did have extraterritorial effect. However, this was not because of s 180 of the MSA but because of s 178 of that Act. As regards s 180 of the MSA, the trial judge held that its effect was to merely confer the Singapore courts with the jurisdiction to hear the charges against Ng.[10] The two provisions under the MSA are as follows:[11]

> **Provision as to jurisdiction in case of offences**
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> **178.** For the purpose of giving jurisdiction under this Act, every offence is deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the offence actually was committed or arose or in any place in which the offender or person complained against may be.
>
> …
>
> **Jurisdiction in case of offences on board ship**
>
> **180.** Where any person is charged with having committed any offence on board any Singapore ship on the high seas or elsewhere outside Singapore or on board any foreign ship to which the person does not belong and that person is found within the jurisdiction of any court in Singapore which would have had cognizance of the offence if it had been committed on board a Singapore ship within the limits of its ordinary jurisdiction, that court has jurisdiction to try the offence as if it had been so committed.

14.6 The Prosecution subsequently amended the charges to include a reference to s 178 of the MSA, and Ng was accordingly convicted under ss 380 and 451 of the Penal Code, read with ss 178 and 180 of the MSA. He was sentenced to four months' imprisonment. He appealed against his conviction.[12]

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7 Cap 224, 2008 Rev Ed.
8 Cap 179, 1996 Rev Ed.
9 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [7].
10 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [8].
11 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [39] and [59].
12 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [10].

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14.7 On appeal, the High Court first noted that the law on statutory interpretation was relevant, given that the resolution of the core issues in the case hinged on how certain statutory provisions were to be interpreted. To this end, the court pointed out that the purposive approach as mandated by s 9A of the Interpretation Act 1965[13] (and elaborated on in *Tan Cheng Bok v Attorney-General*[14] ("*Tan Cheng Bock*")) is to be applied.[15]

14.8 The court then turned to the legal principles governing the prosecution of Singaporeans for offences committed in international waters. Before delving into the details, the court agreed with the trial judge that for an accused person to be tried and convicted in Singapore for acts committed outside Singapore, there are two key issues to be considered:[16]

> (a) whether there is an applicable statutory provision that renders an act committed by the accused person outside Singapore an offence under a Singapore law ("extraterritorial application provision"); and
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> (b) whether there is an applicable statutory provision that confers authority on the Singapore courts to try the accused person for the offence in question ("jurisdictional provision").

14.9 The court emphasised the need to distinguish between the two types of provisions. As regards a jurisdictional provision, the court held that its purpose is to merely confer a Singapore court with the power to try an accused person in Singapore. Examples of a jurisdictional provision include s 15 of the Supreme Court of Judicature Act 1969[17] and ss 50 and 51 of the State Courts Act 1970.[18] Crucially, the court noted that when an accused had done an act outside Singapore, a jurisdiction provision alone is insufficient to form the basis for convicting an accused person of an offence in Singapore. The court held that in order to sustain the conviction, the relevant criminal statute under which an accused person is being charged must *also* have extraterritorial application, that is, it must have the effect of "proscribing conduct that takes place outside Singapore".[19]

14.10 As regards an extraterritorial application provision, the court's starting point was the well-established principle that a domestic statute generally has no extraterritorial effect. In respect of the Penal

13 2020 Rev Ed.
14 [2017] 2 SLR 850.
15 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [14].
16 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [15] and [16].
17 2020 Rev Ed.
18 2020 Rev Ed.
19 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [20]–[24].

Code, the court noted that s 2 contains a presumption of territoriality, which essentially forbids Singapore to extend the reach of its criminal statutes over acts committed in a foreign state's territory. However, this presumption may be rebutted in two scenarios, namely, where: (a) there is some other statutory provision that permits the extraterritorial application of the domestic criminal statute; or (b) the domestic criminal statute itself is intended by Parliament to have extraterritorial effect.[20]

14.11 The court then turned to the facts of the case and found that on a statutory interpretation of s 178 of the MSA, the District Court had erred in holding that it permitted the extraterritorial application of offences under the Penal Code. While the court agreed that s 178 of the MSA is in fact an extraterritorial application provision, the court held that this *only* applied in respect of offences under the MSA. This is evidenced from the phrase "for the purpose of giving jurisdiction *under this* Act" [emphasis added] in s 178[21] as well as the Explanatory Statement to the Merchant Shipping Bill 1995.[22]

14.12 Thereafter, the court turned to s 3 of the Penal Code, which reads:

> Any person liable by law to be tried for an offence committed beyond the limits of Singapore, shall be dealt with according to the provisions of this Code for any act committed beyond Singapore, in the same manner as if such act had been committed within Singapore.

14.13 As agreed by the Prosecution, Ng and the High Court, the phrase "shall be dealt with according to the provisions of this Code for any act committed beyond Singapore" in s 3 enables the extraterritorial application of the Penal Code offence provisions. However, the court highlighted the caveat that this extraterritorial application effect can only be triggered if the accused is, to begin with, a "person liable by law to be tried for an offence committed beyond the limits of Singapore". For this condition to be fulfilled, the court held that there must be a jurisdictional provision that confers the Singapore courts with the power to try the person for an alleged offence committed outside Singapore.[23]

14.14 Put simply, the court's view was that:[24]

> [N]o person who has committed in the territory of a foreign state an act which is criminalised in Singapore, shall be liable to be tried in Singapore for having

20 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [25]–[30].
21 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [39]–[47].
22 Bill No 14/1995.
23 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [48]–[50].
24 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [57].

committed an offence under the Penal Code by virtue of s 3, unless there is some other specific legislative provision having this effect.

14.15 On the facts, the court held (and indeed the parties did not seriously dispute) that the District Court did in fact have the jurisdiction to try Ng for the offences alleged against him. This was not because of s 178 of the MSA as explained above, but because of s 50(2)(*c*) of the State Courts Act 1970 which expressly confers the District Court with the power to try any criminal matter, including offences committed by a Singapore citizen on the high seas (this would be the applicable jurisdictional provision in this case). Accordingly, the court held that s 3 of the Penal Code applied, as an extraterritorial application provision, to treat Ng's acts as having been committed in Singapore.[25]

14.16 To that end, the court dismissed Ng's appeal, and proceeded to exercise its power to amend a charge under s 390(4) of the Criminal Procedure Code[26] to convict Ng of committing offences under ss 380 and 451 of the Penal Code respectively, read with s 3 of the Penal Code and s 50(2)(*c*) of the State Courts Act 1970.[27]

14.17 Although it was not necessary to do so, on account that the parties' submissions revolved heavily around s 180 of the MSA, the court set out its provisional views on the statutory provision. In a nutshell, the court suggested that s 180 of the MSA appears to be a jurisdictional provision applicable only to offences under the MSA committed by non-crew members of a foreign ship.[28]

B. Elements and scope of defence of necessity under s 81 Penal Code

14.18 In *Muhammad Hamir B Laka v Public Prosecutor*,[29] the Court of Appeal clarified the requirements and principles relating to the defence of necessity under s 81 of the Penal Code. This is the first case in Singapore in which the apex court had the opportunity in written grounds to deeply consider this defence.

14.19 The accused ("Hamir") claimed trial to a capital charge of having in possession for the purposes of trafficking not less than 39.71g of

25 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [56].
26 Cap 68, 1985 Rev Ed.
27 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [95]–[100].
28 *Ng Kok Wai v Public Prosecutor* [2024] 3 SLR 1516 at [58]–[94].
29 [2023] 2 SLR 286.

diamorphine under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act.[30] A pillar of his defence was that he had trafficked in the diamorphine out of necessity. Specifically, Hamir argued that trafficking in the diamorphine was necessary because his wife had developed a serious medical condition which required surgery, but he lacked the financial means to pay for the medical bills due to his low-income job and lack of "viable methods" to source for funds. Even though he knew the ramifications of his actions, Hamir argued that his wife's medical condition was "of such a nature and so imminent" that his actions were justified or excusable, especially since he acted in good faith and without criminal intent.[31]

14.20 While acknowledging the gravity of Hamir's circumstances, the Prosecution countered that the defence of necessity should nevertheless fail, firstly given that he did not furnish evidence of attempts to raise funds through alterative means. The Prosecution pointed out that Hamir had other options to raise funds, such as by selling the jewellery and watches found in his possession. Secondly, the Prosecution contended that the harm caused by Hamir's actions was not "reasonable and proportionate" to the pressure of his circumstances.[32]

14.21 The court began its analysis by affirming that the defence of necessity is codified in s 81 of the Penal Code, which main and explanatory provision provides that:

> Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done in good faith for the purpose of preventing or avoiding other harm to person or property.
>
> *Explanation.*—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

14.22 Next, the court undertook a purposive interpretation of s 81 of the Penal Code pursuant to s 9A of the Interpretation Act 1965, in accordance with the framework set out in *Tan Cheng Bok*. On a plain reading of the provision, the court opined that there are two elements to fulfil for the defence of necessity to be established:[33]

30 Cap 185, 2008 Rev Ed.
31 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [15]–[18].
32 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [19]–[21].
33 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [26].

> (a) the accused person must have done an act that he knew was likely to cause harm (the 'subject act'); and
>
> (b) the accused person must have done the subject act in good faith and for the purpose of preventing or avoiding other harm (the 'avoidance of harm purpose').

14.23 As for the statutory context of the provision, the court noted that s 81 was previously amended in 2019 by the Criminal Law Reform Act 2019.[34] Prior to the amendment, s 81 stated that:

> Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done *without any criminal intention to cause harm*, and in good faith for the purpose of preventing or avoiding other harm to person or property.

14.24 The court observed that the post-amended s 81 does not include the phrase "without any criminal intention to cause harm". In the court's view, the reason for the deletion of that phrase can be traced to one of the recommendations made by Penal Code Review Committee in its reports,[35] that was, to codify the definition of "intention" in the Penal Code to include oblique intention. The concern was that if the reference to "criminal intention" under s 81 were not removed, this would possibly render s 81 "unworkable" because it would not only preclude persons who commit the subject act with the actual intention to cause harm from relying on the defence of necessity, but also persons who commit an act with the oblique intention to cause harm. On that basis, the court concluded that the legislative purpose of s 81 is clearly to preclude persons who have engaged in premeditated criminal conduct from relying on the defence of necessity.[36]

14.25 In the court's view, this interpretation is supported by the requirement for the subject act to have been "done in good faith". As the court explained:[37]

> In the context of s 81, [the requirement of good faith] must mean that the assessment of the risk of the subject act, and the purpose and the justification for running that risk, must have been done with due care and attention given the circumstances that the accused person was in. It seems to us to be virtually impossible to conceive of a situation in which a premeditated decision to engage in criminal conduct can be said to have been made in good faith … [I]f it were otherwise, it would suggest that the defence of necessity could be invoked to

34 Act 15 of 2019.
35 Penal Code Review Committee, *Penal Code Review Committee Report* (August 2018) at p 239.
36 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [29]–[32].
37 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [33].

excuse a deliberate and wilful criminal act based on the offender's subjective assessment of the relative harm of doing that act against the perceived benefits. That is untenable, in our judgment.

14.26 In arriving at this position, the court drew further support from the illustrations to s 81, which evinced the following three features:[38]

(a) In each illustration, the subject act is done *not* as a premeditated act, but as an act decided upon on the spur of the moment for the purpose of preventing or avoiding what is honestly and reasonably believed to be much greater imminent harm.

(b) In each illustration, the subject act is never done with the intention to inflict harm but to avoid greater harm, such that the risk of some harm being caused by the subject act may be excused.

(c) It is the operative intent underlying the commission of the subject act, namely, the avoidance of greater harm, that determines whether it was an act in good faith.

[emphasis in original]

14.27 Most importantly, the Court of Appeal distilled four guiding principles for determining whether the defence of necessity under s 81 can be made out:[39]

(a) The defence will not avail where the accused person engages in deliberate or premeditated criminal conduct or the deliberate and wilful infliction of harm.

(b) To avail of the defence, the offender must have acted in good faith and must have assessed the risk that inhered in the subject act and the justification for running that risk with due care and attention, though this will be considered having regard to the circumstances he was in.

(c) The defence may in principle be invoked if the offender has the oblique intention to cause some harm, but acted solely for the purpose of avoiding much greater harm.

(d) The harm to be avoided must reasonably be apprehended to:

(i) be imminent;

(ii) be more likely and more serious than the harm risked by the subject act; and

(iii) leave the accused person with no reasonable legal alternative course to take.

38 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [35].
39 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [43].

14.28 Applying these principles to the case, the court held that Hamir could not avail himself of the defence of necessity, given that the harm caused by his actions was extensive, and the evidence showed that he had made a "premeditated decision" to traffic in drugs. Relevantly, Hamir had admitted in his contemporaneous statement that he trafficked in the drugs to sell them at a profit, going so far as to detail how he obtained the drugs from his supplier and the price at which he would sell the drugs. The court noted that ultimately this was "not a case of a subject act being committed to directly prevent greater imminent harm".[40]

14.29 Moreover, the court found that Hamir had wholly failed to provide any evidence to even properly mount the defence of necessity. Despite claiming that he had no viable option to fund his wife's medical bills, he had failed to adduce evidence of: (a) any assets that he had access to; (b) any (non-illegal) efforts undertaken on his part to raise funds; (c) the actual or projected costs of the medical bills; (d) the urgency of the situation; and (e) who ultimately paid for the operation. Accordingly, the court unreservedly dismissed Hamir's claim that he could avail himself of the defence of necessity.[41]

III. Offences under Penal Code

A. Murder under s 300(c) – identifying "bodily injury" where multiple contributory causes to deceased's fatal injury

14.30 In *Public Prosecutor v Muhammad Salihin bin Ismail*[42] ("*Muhammad Salihin*"), the High Court considered the issue of how "bodily injury" under s 300(*c*) of the Penal Code is to be identified. In particular, in a case involving multiple contributory causes to a deceased's fatal injury, does "bodily injury" refer to the composite injury found on the deceased at time of death, or does it refer to the injury actually caused by or attributable to the accused?

14.31 The salient facts of the case are as follows.[43] On 1 September 2018, the accused ("Salihin") was at home with his four-year-old stepdaughter ("Victim") and his two biological children ("Twins"). According to the court's findings and the pathologist's autopsy report, the following

40 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [44] and [45].
41 *Muhammad Hamir B Laka v Public Prosecutor* [2023] 2 SLR 286 at [46].
42 [2023] SGHC 155.
43 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [4]–[20] and [28]–[36].

events took place from the morning of that day to the early hours of 2 September 2018:

> (a) At around 3pm on 1 September 2018, Salihin forcefully kicked the Victim's abdomen twice, out of anger upon witnessing the Victim urinate on the floor.
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> (b) At around 7pm on 1 September 2018, the Twins bounced on the Victim's abdomen a few times.
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> (c) Between the night of 1 September 2018 and the early morning of 2 September 2018, the Victim vomited several times, causing her to experience intra-abdominal pressure.
>
> (d) After vomiting at around 8am on 2 September 2018, the Victim became unconscious. Salihin forcefully performed cardiopulmonary resuscitation ("CPR") on the Victim, which could have possibly compressed the Victim's abdomen and caused her internal injuries.
>
> (e) After multiple resuscitation attempts by the on-scene paramedics and doctors at Ng Teng Fong Hospital, the Victim was pronounced dead at 10.12am on 2 September 2018.

14.32 The Victim's cause of death was determined by the pathologist to be internal bleeding in the abdominal cavity (the "intra-abdominal injuries") caused by blunt force trauma of the abdomen. Salihin was thereafter charged with, *inter alia*, murder under s 300(*c*) of the Penal Code, and tried before the High Court.

14.33 A key point of contention centered around how "bodily injury" was to be identified in the situation where there are multiple contributory causes to the fatal injury, for the purposes of the test for s 300(*c*) liability as set forth in *Virsa Singh v State of Punjab*[44] (the "*Virsa Singh* test"). The Defence argued that in such a situation, "bodily injury" would refer only to the injury actually caused by the accused, rather than the composite injury found on the deceased. On the other hand, the Prosecution argued that the problem of multiple contributory causes was fundamentally an issue of legal causation which neither arises under nor can be resolved by the *Virsa Singh* test.[45] The issue should simply be dealt with by applying the usual "substantial cause" test.

14.34 The High Court agreed with the Prosecution that the *Virsa Singh* test does not deal with the issue of causation *of the deceased's death*.[46] This

44 AIR 1958 SC 465 at [12].
45 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [37] and [38].
46 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [39]–[42].

is on the basis that the wording of s 300 (and in turn s 300(*c*)) sets out only the *mens rea* requirement of murder, whereas the causation requirement and *actus reus* element for murder are set out in s 299. This is evidenced from the phrase "causes death by doing an act" under s 299.[47]

14.35 Nevertheless, the High Court disagreed that the presence of multiple contributory causes to the fatal injury would always be an issue of causation. It opined that it may well raise a distinct set of issues in relation to the application of the *Virsa Singh* test.[48] The court began its analysis by spelling out the *Virsa Singh* test:[49]

> (a) a bodily injury must be present and objectively proved;
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> (b) the nature of the injury must be objectively proved;
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> (c) it must be established that the bodily injury in question had been intentionally inflicted; and
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> (d) the bodily injury in question must be sufficient to cause death in the ordinary course of nature.

14.36 Next, the court reasoned that since the third element of the *Virsa Singh* test asks whether a particular "bodily injury" is intentionally inflicted by the accused, it would only be logical for "bodily injury" to refer to the injury actually caused by the accused and not simply the composite injury found on the deceased. But that is not to say that the bodily injury inflicted by the accused must be the sole cause of death, for that would be a conflation of the *cause of death* (to which the ordinary principles relating to causation shall apply) and the *cause of bodily injury* (to which the *Virsa Singh* test shall apply) as noted earlier by the court.[50]

14.37 Consequently, where there are multiple contributory causes to an injury that leads to death, the court held that it would be imperative to identify and isolate the *injury actually inflicted by the accused*, which would then be treated as the "bodily injury" to which the *Virsa Singh* test shall be applied.[51]

14.38 Applying this principle, the court found that the injury inflicted by Salihin was indeed the intra-abdominal injuries present on the Victim. Although the autopsy report found that the intra-abdominal injuries were caused by blunt force trauma – and there were multiple

47 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [42].
48 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [39].
49 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [43], citing *Public Prosecutor v Chia Kee Chen* [2018] 2 SLR 249 at [45].
50 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [40] and [45].
51 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [52].

sources of blunt force trauma including Salihin's kicking of the Victim, the Twins' bouncing on the Victim's abdomen, the Victim's vomiting, and Salihin's CPR on the Victim – the court found that only Salihin's kicking had a non-negligible contributory effect to the intra-abdominal injuries suffered by the Victim. Accordingly, the court concluded that the "entirety of the intra-abdominal injuries … were attributable to [Salihin]", and it constituted the "bodily injury" for the purposes of applying the *Virsa Singh* test.[52]

14.39 A point that may be worth noting is that in respect of the situation where it is impossible to identify and isolate the injury inflicted by the accused (from injuries arising from other causes), the High Court declined to express any view beyond suggesting tentatively that the solution could lie in "evaluating the facts against other limbs of s 300 of the Penal Code instead of s 300(*c*), or … in revisiting the *Virsa Singh* test".[53]

14.40 The High Court then turned to the third element of the *Virsa Singh* test and reiterated the principles enunciated in *Public Prosecutor v Lim Poh Lye*.[54] In summary, the accused must have subjectively intended to cause the bodily injury present on the deceased, a requirement which would not be fulfilled if the accused caused the bodily injury accidentally or intended some other kind of injury. Additionally, it is immaterial whether the accused appreciated the extent of the injury he inflicted upon the deceased.[55]

14.41 On the facts, the court found that although Salihin did forcefully kick the Victim, it was done so spontaneously rather than with the intention of striking the Victim with sufficient force as to cause the injuries actually suffered by the Victim. In the court's view, there were a few significant facts that went towards proving the spontaneity of Salihin's kicks. First, he kicked the Victim as a result of his anger with the Victim urinating on the floor and refusing to answer his questions, and those kicks landed on the Victim's abdomen only because it happened to be directly in front of Salihin's foot. Second, the whole sequence of "happened so quickly".[56] Third, later in the day when Salihin sought to apply ointment on the Victim's abdomen, he had to ask her where exactly she felt pain, therefore suggesting that Salihin did not know where exactly his kicks landed. Accordingly, the court concluded that the third element of the *Virsa Singh* test was not fulfilled, and Salihin was therefore acquitted

52 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [55]–[69].
53 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [53].
54 [2005] 4 SLR(R) 582.
55 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [70] and [71].
56 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [75].

of murder under s 300(*c*) of the Penal Code.[57] The court further found that Salihin could not be convicted for culpable homicide not amounting to murder under s 299 of the Penal Code, because Salihin neither had the intention to cause the Victim's death, nor the intention of causing such bodily injury as is likely to cause the Victim's death, nor had the knowledge that he was likely by his conduct to cause the Victim's death.

14.42 Instead, the High Court convicted Salihin for voluntarily causing grievous hurt under s 325 of the Penal Code and sentenced him accordingly. The Prosecution appealed against the acquittal and the sentence, and the Defence appealed against the sentence. As of the date of writing this chapter, the Court of Appeal has heard and allowed the Prosecution's appeal and convicted Salihin of murder under s 300(*c*) of the Penal Code.[58] The written judgment for that decision will be reviewed in next year's chapter.

B. Sexual assault by penetration – definition of "penetration"

14.43 In *Mustapah bin Abdullah v Public Prosecutor*,[59] the Court of Appeal considered the meaning of "penetration" in relation to the issue of whether an accused person's contention that his penis was flaccid can serve as a defence to criminal liability for sexual assault by penetration.

14.44 The gist of the case is as follows. The appellant ("Mustapah") made three adolescent male students meet him individually at the top of a playground slide, where he would unzip his pants, expose his penis and demand each of them to "suck [his] penis". Out of fear that Mustapah would harm them and their families, all three of them acquiesced to his demand.[60]

14.45 In his long statements, Mustapah asserted that each round of fellatio lasted only a few seconds before he pushed them away, that his penis was never erect at any point in time and that he did not ejaculate in all three instances. Further, he denied that any of them had sucked his penis. Instead, Mustapah asserted that all of them had merely "put" their mouths "onto his penis" or "covered" his penis with their mouths.[61]

14.46 Mustapah was charged for three counts of sexual assault by oral-penile penetration under s 376(1)(*a*) of the Penal Code. He was convicted

57 *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 at [74]–[78].
58 *Public Prosecutor v Muhammad Salihin bin Ismail* [2024] SGCA 22.
59 [2023] SGCA 30.
60 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [6]–[23].
61 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [25]–[27].

by the trial judge, who found that Mustapah had penetrated each of the three victims' mouths with his penis without their consent. In the trial judge's view, the offence may be disclosed even though at the material time Mustapah's penis was not erect, that there was no "sucking" of his penis involved, or that the penetration was brief. Mustapah appealed against his conviction.[62]

14.47 On appeal, one issue the Court of Appeal had to decide was whether "penetration" had been made out. Mustapah maintained that there was no penetration, *inter alia*, on the ground that his penis was not erect. The Prosecution argued that penetration had been made out, even if his penis was not erect or if the penetration was brief.[63]

14.48 The court began its analysis by setting out the offence of sexual assault by penetration under s 376(1)(*a*) of the Penal Code:

> Any man (A) who —
>
> (*a*) penetrates, with A's penis, the anus or mouth of another person (B); …
>
> shall be guilty of an offence if B did not consent to the penetration.

The court noted that the only elements required to be proven was that (a) Mustapah had penetrated each victim's mouth with his penis, and (b) each victim did not consent to such penetration.[64]

14.49 The court then turned to consider the meaning of "penetrates", which it opined was "not a difficult exercise". The first port of call was to look at the ordinary meaning of "penetrates", which is "to enter or go into or go through". Next, the court looked at the definition of "penetration" under s 377C(3)(*a*) of the Penal Code, which is a "continuing act from entry to withdrawal". The court concluded that "penetrates" simply refers to "something going into something else *and that is all*" [emphasis added].[65]

14.50 Applying that conclusion to the facts of the case, the court agreed with the trial judge that Mustapah had in fact penetrated the victims' mouths, because Mustapah himself had admitted that his penis was in the victims' mouths. It did not matter that Mustapah's penis was flaccid, given that the definition of "penetration" under s 377C(3)(*a*) clearly does not require an erect penis, and that it was "common sense" that

62 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [32]–[35].
63 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [44] and [46].
64 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [67].
65 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [68].

a flaccid penis would equally be able to enter and withdraw from (that is, penetrate) the victims' mouths.[66]

14.51 As the court proceeded to also find that the victims had not given genuine consent to fellate Mustapah (since they did so out of fear that his threats of violence to them and their families would materialise), the trial judge's conviction of Mustapah under s 376(1)(*a*) of the Penal Code was accordingly upheld.[67]

C. Whether accused must owe duty of disclosure in order for offence of cheating to be disclosed

14.52 In *Public Prosecutor v Soh Chee Wen*,[68] the first accused ("Soh") and second accused ("Quah") were together charged for, among other things, being a party to conspiracies to commit cheating under s 420 of the Penal Code.

14.53 The facts of the case are extremely complex. Very broadly speaking, the case involved what was described by the Prosecution as the most serious instance of stock market manipulation in Singapore. It was orchestrated by the two accused persons between 1 August 2012 and 3 October 2013 (the "Relevant Period") in respect of three counters – Blumont, Asiasons and LionGold (collectively, "BAL shares") – which were then being traded on the Singapore Exchange.

14.54 The Prosecution's overarching case was that the accused persons successfully executed a general conspiracy to:[69]

> … artificially inflate the markets for and manipulate prices of BAL shares … essentially … by controlling, coordinating their use of, obtaining financing for, and conducting illegitimate trading activity in an extensive web comprising 189 trading accounts (the 'Relevant Accounts') held with 20 financial institutions ('FIs') in the names of 60 individuals and companies (the 'Relevant Accountholders').

This general conspiracy (which the court labelled as the "Scheme") was not the subject of any specific charge. Rather, the charges brought against the accused persons were concerned with the "narrower *aspects* of the Scheme" [emphasis in original],[70] and the narrative put forth by the

66 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [70].
67 *Mustapah bin Abdullah v Public Prosecutor* [2023] SGCA 30 at [101]–[114].
68 [2023] SGHC 299.
69 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [25].
70 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [9(b)].

Prosecution in respect of Scheme merely served as the "through line" of all those charges.[71]

The key factual findings by the court are as follows:

> (a) Save for two of the 189 Relevant Accounts, the remaining Relevant Accounts were controlled by the accused persons to achieve some common purpose involving the sale, purchase and holding of BAL shares. In particular, there was ample evidence of the accused persons giving trade instructions to those in control of the Relevant Accounts, which included trading representatives ("TRs"), accountholders of the Relevant Accounts ("Relevant Accountholders") themselves, and intermediaries of the Relevant Accountholders.[72]
>
> (b) The accused persons' control over the 187 Relevant Accounts was coordinated. For instance, the accused persons took steps to procure a substantial number of trading accounts, tracked the shareholdings of most of the Relevant Account, and treated the BAL shares in the Relevant Accounts as if they were part of a common pool.[73]
>
> (c) The Relevant Accounts were used to conduct several illegitimate trading practices (mainly wash trading), which strongly supported the inference that the Relevant Accounts were intended by the accused persons to be used to manipulate the market for and price of the BAL shares.[74]
>
> (d) Given that the accused persons controlled the Relevant Accounts to trade BAL shares, it could be concluded that the markets for BAL shares were indeed inflated by the accused persons' actions.[75]
>
> (e) The price of the BAL shares was indeed overvalued though this was not particularly useful for ascertaining the accused persons' liability for the price manipulation. The accused persons' defence was not that the markets for and prices of the BAL shares were not inflated. Rather, their defence was that this manipulation was done by other persons and not by them.[76] At best, the inflated value of the BAL shares provided

71 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [9].
72 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [36] and [194]–[727].
73 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [728]–[777].
74 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [778]–[814].
75 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [817]–[825].
76 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [826]–[849].

"confirmatory value" for the accused persons' liability for the price manipulation.

(f) The evidence revealed that the accused persons were not simply trying to earn a quick profit by causing the inflation of the price of BAL shares. Rather, their broader plan was essentially to use the inflated BAL shares as "currency" for corporate acquisitions made by Blumon, Asiasons and LionGold (for example, by pledging the shares to obtain credit lines or by using them as consideration to acquire asset-rich companies). This was made possible by the fact that Soh was extensively involved in the management of those companies.[77]

(g) After the crash of BAL shares, the accused persons (especially Soh) remained substantially involved in matters pertaining to the Relevant Accounts, such as by negotiating settlements with the financial institutions ("FIs") for the losses incurred. Further, Soh tampered with four witnesses after the crash, therefore suggesting that there was something unlawful to be uncovered.[78]

14.56 In respect of the conspiracy to commit cheating charges, the thrust of the Prosecution's case was that the accused persons had conspired to cheat the FIs by inducing them to grant the accused persons margin facilities in exchange for the inflated BAL shares, while dishonestly concealing from the FIs the fact that they had engaged in a course of conduct with the purpose of creating a false appearance in the market for the BAL shares.[79]

14.57 The charges alleged that the accused persons' deception was brought about by an omission. The Defence argued, *inter alia*, that in such a case, there is a legal requirement for the deceiver(s) in question to have been under an attending duty to disclose the relevant fact or state of affairs, which would have operated to dispel the misapprehension. Put another way, the argument is that the scope of cheating offence committed by concealment ought to be limited by the existence of a duty of disclosure.[80]

14.58 The High Court held that there was no such requirement of duty to disclose. The High Court first looked to the Supreme Court of India

77 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [850]–[881].
78 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [882]–[887].
79 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1116].
80 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1120].

case of *Iridium India Telecom Ltd v Motorola Incorporated*,[81] where it was remarked, in relation to the Explanation to s 415 of the Indian Penal Code 1860[82] (which is identical to Explanation 1 to s 415 of the Singapore Penal Code), that the "non-disclosure of relevant information would also be treated as a mis-representation of facts leading to deception". Next, the High Court considered the wording of Explanation 1 to s 415 of the Penal Code and opined that there was nothing to suggest that there must be a duty of disclosure in order for "concealment" to be effected. Indeed, the court noted that there are myriad ways to cheat a victim by dishonestly concealing a particular state of affairs and:[83]

> Not all of these modes of cheating would be premised on a separate and distinct obligation of disclosure arising either from the specific relationship between the particular offender and victim, or from the type of offender and victim as a class.

Lastly, the court looked to the definition of "dishonesty" under s 24 of the Penal Code and held that the scope of the offence of cheating by concealment was already sufficiently controlled by the need to prove the intent behind the concealment and the victim was induced by the concealment to deliver property. Accordingly, there was no need for the existence of a duty of disclosure to further limit the scope of the offence.[84]

14.59 On the facts, the High Court found that the elements of conspiracy to cheat are made out against both accused persons for all of the relevant cheating charges.

D. Elements and constitutionality of criminal defamation under s 499

14.60 In *Xu Yuanchen v Public Prosecutor*,[85] the High Court discussed the elements of the offence of criminal defamation under s 499 of the Penal Code, as well as the constitutionality of that provision.

14.61 At the material time, the first appellant ("Xu") was the director of The Online Citizen Pte Ltd ("TOC"), a company that runs the social-political website "www.theonlinecitizen.com" (the "TOC website"). Xu was also the chief editor of the website. As for the second appellant ("De

81 (2011) 1 SCC 74 at [42].
82 Act 45 of 1860.
83 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1123(b)].
84 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1123].
85 [2023] 5 SLR 1210.

Costa"), he was a regular contributor to the TOC website who authored and submitted various opinion pieces to TOC's editorial team.[86]

14.62 In September 2018, De Costa used the e-mail account of his acquaintance to submit a piece entitled "PAP MP apologises to SDP" to TOC's editorial team, with the intention that the piece be published on the TOC website. This intention was actualised when Xu approved the publication of that piece on the TOC website. The material portion of the piece (the "Paragraph") reads:[87]

> The present PAP leadership severely lacks innovation, vision and the drive to take us into the next lap. We have seen multiple policy and foreign screw-ups, tampering of the Constitution, *corruption at the highest echelons* and apparent lack of respect from foreign powers ever since the demise of founding father Lee Kuan Yew. [emphasis added]

14.63 Both Xu and De Costa were charged with the offence of criminal defamation under s 499 of the Penal Code, with the impugned portion of the piece being the phrase "corruption at the highest echelons" (the "Disputed Phrase"). At trial, the District Court convicted the appellants of the charges. The District Court also dismissed Xu's argument that the criminal defamation provisions were in violation of Art 14 of the Constitution of the Republic of Singapore.[88] Dissatisfied with the decision, the appellants appealed.

14.64 In determining the elements to the offence of criminal defamation, the High Court began by laying out ss 499 and 500 of the Penal Code, the two provisions which govern the liability and punishment for criminal defamation of a person respectively. Next, the court looked to the definition of a "person" under s 11 of the Penal Code and noted that a "person" includes "any company or association or body of persons, whether incorporated or not". The court observed that this definition was in line with Explanation 2 to s 499 of the Penal Code, which reads:[89]

> *Explanation* 2.—It may amount to defamation to make an imputation concerning a company, or an association or a collection of persons as such.

14.65 With that, the court concluded that for the offence of criminal defamation to be made out under s 499 of the Penal Code, there are three elements which needed to be proved:[90]

86 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [3].
87 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [4]–[6].
88 1985 Rev Ed, 1999 Reprint. *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [13]–[16].
89 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [17] and [18].
90 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [19].

(a) making or publishing an imputation concerning any person, which includes a company or an association or collection of persons as such;

(b) making such imputation by words either spoken or intended to be read or by signs or by visible representations; and

(c) making such imputation with the intention of harming or knowing or having reason to believe that such imputation will harm the reputation of that person.

14.66 Thereafter, the court noted that there were several differences between criminal defamation and civil defamation.[91] For the convenience of readers, these differences are summarised in a table as follows:

	Criminal Defamation	**Civil Defamation**
Burden of proof	Beyond reasonable doubt	On a balance of probabilities
Liability	Imprisonment for up to two years, or a fine, or both	Typically damages
Who may be subject of defamation	Liability may arise not only where the offending words refer to an individual, but also where they refer to a company or an association or a collection of persons (see s 11 and Explanation 2 to s 499 of the Penal Code)	The offending words must be capable of being interpreted as referring to a specific individual for liability to arise (see *Review Publishing Co Ltd v Lee Hsien Loong*)[92]

14.67 There were five issues raised by the appellants for the court's determination:[93]

(a) first, whether the charges were defective for lack of particulars as to the precise identities of the allegedly defamed persons;

(b) second, whether, and if so in what way, the Disputed Phrase referred to members of the Cabinet;

(c) third, whether the appellants knew that the Disputed Phrase would harm the reputation of the members of the Cabinet;

(d) fourth, whether the appellants may avail themselves of the Second Exception under s 499 of the Penal Code; and

(e) fifth, whether the criminal defamation provisions are unconstitutional.

91 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [21]–[23].
92 [2010] 1 SLR 52 at [53].
93 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [24].

14.68 In respect of the first issue, De Costa argued that the criminal defamation charges were defective for want of particulars, in so far as it did not specify the particular identities of the persons allegedly targeted by the Disputed Phrase (that is, the precise names of the members of the Cabinet of Singapore who were allegedly defamed). However, this argument was dismissed by the court, on the basis that s 124(1) of the Criminal Procedure Code 2010[94] ("CPC") simply provides that a charge must contain details of, *inter alia*, "the person (if any) against whom … [the alleged offence] was committed" with sufficient particularity. It was clear from s 11 of the Penal Code that a person need not refer to specific individual(s), but also to a specific collection of persons. In the court's view, the term "members of Cabinet" constituted a "collection or body of persons" that fell within s 11 of the Penal Code, and hence it was sufficiently particularised as required under s 124(1) of the CPC.[95]

14.69 In respect of the second issue, the court began by setting out the approach to interpreting the meaning of allegedly defamatory words. On the authority of *Microsoft Corp v SM Summit Holdings Ltd*,[96] the court will seek to ascertain the natural and ordinary meaning of the allegedly defamatory words in accordance with the following principles:[97]

> (a) The court decides what meaning the words would have conveyed to an ordinary, reasonable person using his general knowledge and common sense. The test is an objective one: it is the natural and ordinary meaning as understood by an ordinary, reasonable person, not unduly suspicious or avid for scandal.
>
> (b) The meaning intended by the maker of the defamatory statement and the sense in which the words were understood by the party alleged to have been defamed are irrelevant. Extrinsic evidence is also not admissible in construing the words; the meaning must be gathered from the words themselves and the context of the entire passage in which they are set out.
>
> (c) The court is not confined to the literal or strict meaning of the words, but takes into account what the ordinary, reasonable person may reasonably infer from the words. The ordinary, reasonable person reads between the lines.

14.70 Applying this approach to the case, the court found that "present PAP leadership" in the first sentence of the Paragraph would be interpreted by the ordinary, reasonable person as referring to members of the Cabinet. The court then turned to ascertain the link between "present PAP leadership" in the first sentence and "corruption at the highest echelons" in the second sentence of the Paragraph. It took the

94 2020 Rev Ed.
95 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [25]–[27].
96 [1999] 3 SLR(R) 465 at [53].
97 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [28].

view that the ordinary, reasonable person would read that as corruption at the highest levels arising under the Cabinet, instead of members of the Cabinet themselves being corrupt. In other words, the Paragraph was making an imputation that the Cabinet was incompetent and responsible for substantial corruption in Singapore.[98]

14.71 In respect of the third issue, the court noted that the *mens rea* requirement for criminal defamation is that the accused person must have made the publication "intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person".[99] It also referred to Explanation 4 to s 499, which states as follows:

> *Explanation* 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

14.72 On the facts of the case, the court held that the appellants did know that the Disputed Phrase would harm the reputation of the members of the Cabinet. The court stressed that it was not necessary for the reputation of the target of the defamatory imputation to have *actually* suffered harm, given that s 499 of the Penal Code does not require as such. It is in any event also not necessary for there to have been a complaint, civil suit, or testimony from the defamed persons before harm results from the imputation.[100]

14.73 In respect of the fourth issue, the court began by laying out the Second Exception to s 499 of the Penal Code, which provides that:[101]

> *Second Exception*.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

14.74 As to what constitutes "opinion", the court drew guidance from the defence of fair comment in civil defamation. It noted that "there is no reason … why the principles of this body of case law relating to statements of fact versus opinion should not be applicable to s 499 of the

98 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [39]–[41].
99 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [42] and [43].
100 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [58] and [59].
101 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [63]–[66].

Penal Code as well". It proceeded to hold that a statement of opinion (as opposed to a statement of fact) is one which:[102]

> … comes with clear indications, from the context in which it appears, that it is the author's own view or interpretation of matters … [and] must not be intermingled with a statement of fact such that the reader cannot distinguish between what is an opinion and what is a fact. The identification of a statement of opinion or fact is a question of fact for the court's determination and is dependent upon the nature of the imputation conveyed, and the context and circumstances in which it is published …

14.75 As to what constitutes "good faith", the court referred to the case of *Harbans Singh Sidhu v Public Prosecutor*,[103] which held that whether a statement was made in good faith depends on the following factors:[104]

> … the nature of the imputation, the circumstances under which it was made, whether there was malice, whether any enquiry was made before making the imputation, and whether there were reasons to accept the accused's story that due care and attention were taken and he or she was satisfied that the imputation was true.

14.76 On the facts, the court found that the imputation made by the appellants was clearly a statement of fact, given that there was no clear indication that the Disputed Phrase was the appellants' own views. Accordingly, the court was satisfied that the appellants could not avail themselves of the Second Exception.[105]

14.77 In respect of the final issue, the court first found that the criminal defamation provisions fell within the ambit of Art 14(2)(*a*) of the Singapore Constitution, which permits Parliament to "impose" laws that restrict freedom of speech and expression. It did not matter that the criminal defamation provisions were pre-independence laws, because pre-independence laws that have been retained by Parliament post-independence must necessarily have been approved by Parliament, such that they can be said to have been "imposed" by Parliament.[106]

14.78 The court then held that the proportionality analysis – a legal test used to determine the constitutional validity of governmental acts or laws – did not apply to determine whether the criminal defamation provisions were a valid restriction on the right to freedom of speech and expression. This is principally because it grates against the principle

102 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [67].
103 [1971–1973] SLR(R) 610 at [11].
104 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [71].
105 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [69].
106 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [73]–[79].

of separation of powers, which is deeply entrenched in Singapore constitutional law.[107] Instead, the relevant test was that set out in *Wham Kwok Han Jolovan v Public Prosecutor*.[108] In applying this, the court found that the criminal defamation provisions were constitutionally valid under Art 14(2)(*a*), given that they restrict the constitutional right to freedom of speech in so far as "necessary or expedient" in the interests of public order, and there was a "clear nexus" between the criminal defamation provisions and public order.[109]

14.79 After the appeal was decided, Xu filed a criminal reference before the Court of Appeal. The Court of Appeal dismissed the application as it found that none of the questions raised by Xu was a question of law of public interest.[110]

IV. Offences under other statutes

A. Legal ambit of s 44(1) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

14.80 In *Teo Chu Ha v Public Prosecutor*,[111] the High Court had the opportunity to clarify the legal ambit of the offence under s 44(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act[112] ("CDSA"). It should be noted that this offence is now found in new form under s 50(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992.[113]

14.81 In a nutshell, two siblings, the first appellant ("Henry") and the second appellant ("Judy"), hatched a plan to earn commissions by facilitating business deals between the company Henry was employed at ("Seagate") and third-party suppliers of service. The plan was put into motion by Henry conveying confidential information about Seagate to Judy, which would then be conveyed to the suppliers in order for them to secure contracts with Seagate to supply it with services overseas. A percentage of the profits earned by the suppliers under those contracts would then be transferred into the bank account of Judy's ex-boyfriend (which Judy had control over) via some contractual arrangements between him and the suppliers. Finally, the money would be transferred

107 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [80]–[88].
108 [2021] 1 SLR 476 at [29]–[32].
109 *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [89]–[92].
110 *Xu Yuanchen v Public Prosecutor* [2024] SGCA 17.
111 [2023] 5 SLR 1304.
112 Cap 65A, 2000 Rev Ed.
113 2020 Rev Ed.

from that account into Judy's own account and then into Henry's account, and subsequently used to purchase a condominium unit in Judy's name.[114]

14.82 The Prosecution brought, among other charges, one charge under s 44(1)(*a*) of the CDSA read with s 109 of the Penal Code ("CDSA Charge") each against Henry and Judy. The district judge convicted them of all the charges and the appellants lodged an appeal.[115]

14.83 The High Court had to consider whether the appellants fell within the legal ambit of the CDSA Charge.[116] In particular, the appellants argued that the charge cannot be legally made out because the offence under s 44(1)(*a*) can only be applied to secondary offenders, that is, persons who do not commit the offence from which the proceeds were originally derived but launder the proceeds of another person's crime. Given that both appellants are primary offenders, that is, persons who laundered the benefits of their own criminal conduct, the offence cannot be disclosed. The Prosecution argued that s 44(1) should not be restricted to apply only to primary or secondary offenders.[117]

14.84 Section 44(1) of the CDSA stipulates as follows:

> **44.**—(1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement, knowing or having reasonable grounds to believe that, by the arrangement —
>
> (*a*) the retention or control by or on behalf of another (referred to in this section as that other person) of that other person's benefits of criminal conduct is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise); or
>
> (*b*) that other person's benefits from criminal conduct —
>
> (i) are used to secure funds that are placed at that other person's disposal, directly or indirectly; or
>
> (ii) are used for that other person's benefit to acquire property by way of investment or otherwise,
>
> and knowing or having reasonable grounds to believe that that other person is a person who engages in or has engaged in criminal conduct or has benefited from criminal conduct shall be guilty of an offence.

14.85 On a purposive interpretation of the provision in accordance with the principles enunciated in *Tan Cheng Bock*, the court held that in

114 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [5]–[33].
115 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [2]–[4].
116 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [43].
117 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [59] and [60].

the situation where two individuals, A and B, enter into an arrangement with either of the purpose(s) stated in s 44(1)(*a*) or 44(1)(*b*) of the CDSA, and only B's benefits of criminal conduct are at issue (the "Situation"), s 44(1) of the CDSA can only apply to A.[118] In short, s 44(1) *per se* cannot apply to two primary offenders.

14.86 For a start, the court noted that the header of s 44 reads "Assisting another to retain benefits from criminal conduct". This "intimates that the provision proscribes conduct on the part of individual A which is facilitative of individual B retaining benefits from criminal conduct attributable to individual B".[119] A plain reading of the header therefore suggests that in the Situation, s 44(1)(*a*) of the CDSA is to only apply in respect of A instead of B.

14.87 Second, the court noted that the *mens rea* requirement is that of "reasonable grounds to believe" that benefits from criminal conduct are retained, which is wider in scope than actual knowledge and which makes sense only if a charge under s 44(1) of the CDSA is brought against someone other than B. It would not make sense for B to be charged with that provision, given that B, being the party who engaged in the criminal conduct from which benefits were accrued and retained, would invariably satisfy that *mens rea* requirement.

14.88 Third, adopting such an interpretation of s 44(1)(*a*) of the CDSA would be consistent with and in furtherance of the CDSA's overarching object, which, as canvassed in *WBL Corp Ltd v Lew Chee Fai Kevin*,[120] is to "prevent ill-gotten gains from being laundered into other property so as to avoid detection". Moreover, the court noted that there already are other provisions under the CDSA that govern the liability of B in the Situation (for example ss 46(1) and 47(1)).[121]

14.89 Ultimately however, since the appellants were charged with s 44(1)(*a*) of the CDSA *read with s 109 of the Penal Code* (that is, the charge alleged that the appellants conspired for Henry to help Judy retain her benefits from criminal conduct), both of them therefore came within the ambit of the CDSA Charge.[122] In this regard, the court accepted the Prosecution's argument that where A and B conspire for A

118 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [62].
119 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [64].
120 [2012] 2 SLR 978 at [31]. See also *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 where the court held at [40] that the object of the CDSA is "to deprive criminals of the ability to enjoy the fruit of their criminal conduct and to protect the good names of Singapore's financial institutions and its status as a financial hub".
121 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [64]–[69].
122 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [61] and [62].

to be concerned in an arrangement under which A would facilitate B's control of his benefits of criminal conduct, both A and B may be charged under s 44(1)(*a*) of the CDSA read in conjunction with s 109 of the Penal Code (which is precisely the situation in the present case). As the court explained:[123]

> Even though individual B may not be prosecuted under s 44(1) of the CDSA, there is no impediment to him or her being prosecuted under s 44(1) of the CDSA read with s 109 of the Penal Code because *the nub of the charge is now different*. Assuming that, as in the present case, the latter charge concerns an abetment by conspiracy, this charge now proscribes the agreement between individuals A and B for individual A to enter into or be otherwise concerned in an arrangement under which individual A would facilitate the retention or control of individual B's benefits of criminal conduct. It hence stands apart from individual B's role (if any) in the arrangement. To put it another way, that individual B may have some involvement in the arrangement *does not detract from the distinct wrong he or she commits by way of the conspiracy*. [emphasis added]

*B. Elements of offence of false trading and market rigging under s 197(1)(*b*) Securities and Futures Act*

14.90 In *Public Prosecutor v Soh Chee Wen*, Soh and Quah were together charged for, among other things, being a party to conspiracies to commit false trading (in respect of the markets for BAL shares) and price manipulation (in respect of the price of BAL shares) under s 197(1)(*b*) of the Securities and Futures Act[124] ("SFA").

14.91 The general facts of the case have been summarised above in this chapter.[125]

14.92 In relation to the two accused persons' false trading and price manipulation charges, the court first noted that since the Prosecution brought conspiracy charges, what had to be proven was that the accused persons agreed to commit the offence under s 197(1)(*b*) of the SFA. The court also noted that since the Prosecution pursued three of the false trading charges under s 197(1)(*b*) of the pre-amendment SFA and the remaining three charges under s 197(1)(*b*) of the post-amendment SFA (which came into force on 18 March 2023), it was necessary to consider the requirements of and principles relating to s 197(1)(*b*) of both versions of the SFA.[126]

123 *Teo Chu Ha v Public Prosecutor* [2023] 5 SLR 1304 at [78].
124 Cap 289, 2006 Rev Ed.
125 See paras 14.53–14.55 above.
126 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [157]–[160].

14.93 The pre-amendment version of s 197(1) provides that:

> **197.**—(1) No person shall create, or do anything that is intended or likely to create a false or misleading appearance —
>
> (*a*) of active trading in any securities on a securities market; or
>
> (*b*) with respect to the market for, or the price of, such securities.

14.94 On the other hand, the post-amendment version of s 197(1) provides that:

> **197.**—(1) No person shall do any thing, cause any thing to be done or engage in any course of conduct, if his purpose, or any of his purposes, for doing that thing, causing that thing to be done or engaging in that course of conduct, as the case may be, is to create a false or misleading appearance —
>
> (*a*) of active trading in any securities on a securities market; or
>
> (*b*) with respect to the market for, or the price of, such securities.

14.95 The High Court highlighted that on a plain reading of the pre-amendment version of s 197(1)(*b*), there were three potential ways by which an accused person may be liable, namely, by: (a) actually creating a false or misleading appearance in respect of either the trading activity of, the market for, or the price of a security; (b) doing anything intended to create such an appearance; or (c) doing anything that is likely to create such an appearance. Given that the Prosecution decided to go under the second way, it need only be proven that the accused persons committed certain "acts" with the intention of creating a false appearance *vis-à-vis* the market for BAL shares.[127]

14.96 The High Court stated that the level of "intent" needed to be proven was "not wholly clear",[128] given the absence of any Court of Appeal guidance on this matter. The court considered the previous Singapore High Court case of *Monetary Authority of Singapore v Tan Chong Koay*.[129] That case suggested that the accused person must have possessed "the sole or dominant intention … to set or maintain a certain price of a security".[130] However, the High Court here disagreed with this, by reason that nothing in the pre-amendment version of s 197(1)(*b*) states that the level of "intent" has to be "sole" or "dominant". Consequently, the High Court held that the pre-amendment version of s 197(1)(*b*) merely

127 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [166] and [167].
128 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [170].
129 [2011] 1 SLR 348.
130 *Monetary Authority of Singapore v Tan Chong Koay* [2011] 1 SLR 348 at [67].

requires "intention" in the ordinary sense[131] (as laid out in well-established authorities such as *Daniel Vijay s/o Katherasan v Public Prosecutor*).[132]

14.97 As regards the post-amendment version of s 197(1)(*b*), the court highlighted that there are also three potential ways by which an accused person may be liable under it, namely, where the accused person: (a) does anything; (b) causes anything to be done; or (c) engages in a course of conduct, with the purpose of creating a false or misleading appearance. The court made three points in respect of this.[133]

14.98 Firstly, the court noted that in contrast to the pre-amendment version of s 197(1)(*b*) which prescribes a *mens rea* requirement only for the second limb (that is, intention to create a false or misleading appearance), all three limbs of the post-amendment version of s 197(1)(*b*) is accompanied by a *mens rea* requirement (that is, has the purpose of creating false or misleading appearance).

14.99 Secondly, the court observed that while the phrase "course of conduct" is not statutorily defined, it is nevertheless to be interpreted ordinarily, since there is nothing ambiguous about it. Therefore, "course of conduct" is to be interpreted as "a series of acts which could collectively be said to form a unified course with some centrality and continuity of purpose".

14.100 Thirdly, the court noted that the pre- and post-amendment versions of s 197(1)(*b*) ostensibly prescribe different *mens rea* requirements (that is, "intent" and "purpose" respectively). In this regard, the court was prepared to accept that "purpose" was narrower than "intent", in that a person "cannot effectuate a purpose without doing an intentional act to achieve it". Nonetheless, the court was reluctant to accept the proposition that where a person acts with "intent", he does not necessarily act with "purpose". In dismissing this as an "extremely technical argument", the court opined that it would be "rather contrived" to suggest in the present context that there is an analytical difference in determining whether one has acted with a particular "purpose" and whether one has acted with "intent". This is on the basis that "if a false appearance as to the market was created intentionally, it could scarcely be maintained that the creator(s) of such false appearance did not purposefully bring about such appearance".[134]

131 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [170] and [171].
132 [2010] 4 SLR 1119 at [88].
133 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [173].
134 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [173]–[177].

14.101 As a general point, the court also offered guidance on the meaning of false appearance as to "market" and "price", which is an element found in both the pre- and post-amendment versions of s 197(1)(*b*). In agreeing with the Prosecution's position (which the Defence did not dispute), the court held that there would be a false appearance as to the "market" for a security where there is "*any* artificial distortion of the true forces of supply and demand in the financial market for that security" [emphasis in original],[135] which may be determined by looking at whether the accused person had a legitimate commercial objective in conducting his trading activity. In a similar vein, the court held that there would be a false appearance as to the price of a security where "trades [are] conducted not for the primary purpose of genuine investment but for some extraneous purpose of setting or maintaining the market price".[136]

*C. Concealment that falls under offence of employment of deception under s 201(*b*) Securities and Futures Act*

14.102 In *Public Prosecutor v Soh Chee Wen*, Soh and Quah were together charged for, among other things, being a party to conspiracies to use deceptive devices in connection with the subscription, purchase or sale of securities under s 201(*b*) of the SFA.

14.103 The general facts of the case have been summarised above in this chapter.[137]

14.104 In relation to the two accused persons' use of deceptive devices charges, the court noted that both accused persons were alleged to have concealed their involvement in the instructing of orders and trades of securities in the Relevant Accounts.[138] Section 201(*b*) prescribes as follows:

> **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 …

14.105 The court noted that this provision created a "catch-all" prohibition against the use of manipulative and deceptive devices in general, and thus it would be imperative to "identify the specific type of

135 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [178].
136 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [178].
137 See paras 14.53–14.55 above.
138 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [946] and [947].

act, practice, or course of business which was purportedly deceptive".[139] In this case, the Prosecution's broad allegation was that the accused persons had concealed their "involvement" in the instructing of orders and trades of securities in the Relevant Accounts (but there was no allegation that they had done so at the benefit of themselves and not the Relevant Accountholders).[140] The High Court thus framed the issue as such:[141]

> Absent the specific allegation that the Relevant Accountholders had been the accused persons' nominees and proof thereof, was it an offence under s 201(*b*) for the accused persons to have 'concealed their ***involvement*** in the instructing of orders and trades' in the Relevant Accounts? Did such an act of concealment, ***without more***, constitute a practice that was 'likely to operate as a deception' upon the FIs? [emphasis in original]

14.106 In answering this in the affirmative, the High Court preliminarily noted that since the FIs were not concerned with imposing the requirement of formal written authorisation *for its own sake*, it may seem that the Prosecution's allegation in the deception charges was too broad to fall afoul of s 201(*b*) of the SFA. This was especially since the word "involvement" itself is so broad that it could even capture innocuous trading practices.[142]

14.107 Nevertheless, the court decided that a restrictive interpretation of the word "involvement" was warranted, in so far as "bare" involvement in an account was "an important lead up to obvious wrongdoing (as seen in the present case)", regardless of whether beneficial ownership or illegal activity had been strictly proven. This would operate to prevent the potential scope of s 201(*b*) of the SFA from being cast too wide.[143]

14.108 In applying the foregoing to the case, the court found that despite the broad manner in which the deception charges were framed by the Prosecution, the allegations made against the accused persons therein were nonetheless captured by s 201(*b*). The reasons are as follows:[144]

> Collectively, the 'involvement' by utilising a large network of accountholders, TRs, and intermediaries can be applied to various nefarious ends. Indeed, when applied at a scale, as in this case, the ways in which the accused persons were 'involved' in the accounts made detection difficult, and this was a mischief which, in my view, ought to be caught by s 201(*b*). I turned then to the *kinds* of 'involvement'. Where the instructions are given *directly* to TRs, the difficulty in detection certainly is partially the fault of TRs for accepting such

139 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [959].
140 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [959]–[961].
141 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [962].
142 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [968].
143 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [974].
144 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [975] and [976].

> instructions. However, it need not only lie on the FIs' shoulders to ensure their TRs do not skirt this requirement. Where instructions are given *indirectly* through an accountholder or other authorised person, this is arguably even more insidious because it cloaks the potential discovery of wrongdoing behind a veneer of legitimacy. The interposition of the accountholder or authorised person does not cure the lack of authorisation. Thus, I found that s 201(*b*) ought to be extended to prevent the kind of abuse as seen in the present case, *ie,* to evade detection of illegal activity. The broad charges, as seen here, may be contemplated only where there is an interest in securing transparency between accountholders, account users and FIs, especially where such involvement is an *indicium* of nominee trading or other unlawful trading activity. [emphasis in original]

14.109 Having established that, the court turned to the key inquiry of whether on the evidence, the accused persons can be said to have conspired to "conceal their involvement in the instructing of orders and trades" from the FIs in respect of the Relevant Accounts. Under this inquiry, an issue arose regarding whether the TRs' knowledge of the accused persons' involvement in the instructing of orders and trades could be attributed to the FIs, such that it cannot be said that the FIs were deceived by the accused persons.[145]

14.110 The Defence argued that since the TRs are remisiers, who are agents of the brokerages by which they are engaged, knowledge that they acquire would be attributable to their principals (that is, the FIs). In response, the Prosecution made three arguments: (a) not all the TRs for the FIs knew of the accused persons' involvement in the giving of trade instructions; (b) as a matter of law, an agent's knowledge can only be attributed to his principal if the agent was acting withing the scope of his actual or ostensible authority; and (c) even if the TRs were acting within their authority, the "fraud exception" formulated in *Re Hampshire Land Co Sons & Co*[146] ("*Re Hampshire*") would apply to exclude the attribution of their knowledge to the FIs. *Vis-à-vis* the third submission, the Prosecution argued that since the present case was a criminal one, an "extension" of the "fraud exception" beyond cases of actual fraud to include honest breaches of duty by agents was warranted.[147]

14.111 On the Prosecution's third argument, the High Court suggested that the term "fraud exception" was a misnomer, for the issue of whether an agent's knowledge may be attributed to its principal is a highly context-specific inquiry, in respect of which there is no overarching principle. As a corollary of that, the court opined that there can be no "fraud exception"

145 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [990] and [991].
146 [1896] 2 Ch 743.
147 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [991], [992] and [996].

per se, in so far as there is absent any rule or principle or policy that would permit attributing a fraudulent agent's knowledge to its principal, where the action is brought by the principal against the agent in respect of the very fraud in issue. The court also took the view that precluding the attribution of an agent's knowledge to its principal would not be confined to cases of actual fraud, and it would extend to cases of honest breaches of duty by the agent. The court's last clarification was that the principle in *Re Hampshire* only applied to typical principal-agent disputes, which was patently not the case in the present case. As the court explained:[148]

> Unlike the generally more straightforward circumstances of principal-agent disputes, here, Party 2 was seeking to attribute the knowledge of Party 3 to Party 4 for the purposes of a defence against criminal prosecution brought by Party 1. If one were to lose sight of the fact that attribution questions fundamentally need to be answered by reference to the context in which they are argued, such a situation may yield an unduly technical analysis. However, taking a step back from the superficial complexity in the present case, it will be seen that the underlying question which needed to be answered was simply whether attribution of the TRs' knowledge to the FIs was justified to allow the accused persons the benefit of the fact that the TRs had acted in breach of their duties to their principals. The short and obvious answer was 'no'.

14.112 Returning to the facts of the case, the court held that the TRs' knowledge could not be attributed to the FIs. Principally, since the accused persons were clearly aware of the impropriety in instructing the TRs to make the trades without formal authorisation by the FIs, there was therefore "no principle, rule, or policy which could justify saddling the FIs with the knowledge of the TRs whom the accused persons had themselves induced … to act in breach of their duties".[149]

A. Meaning of "concerned in the management of any corporation" under s 148(1) Companies Act

14.113 In *Public Prosecutor v Soh Chee Wen*, the first accused, Soh, was charged for, among other things, being concerned in the management of a corporation despite being an undischarged bankrupt under s 148(1) of the Companies Act.[150]

14.114 The general facts of the case have been summarised above in this chapter.[151]

148 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1001].
149 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1002].
150 Cap 50, 2006 Rev Ed.
151 See paras 14.53–14.55 above.

14.115 Section 148(1) of the Companies Act states as follows:

> **148.**—(1) Every person who, being an undischarged bankrupt (whether the person was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the permission of the Court or the written permission of the Official Assignee, 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 2 years or to both.

14.116 In determining whether Soh had fallen afoul of s 148(1), an issue arose as to the meaning of "concerned in the management of any corporation". Preliminarily, the court dismissed Soh's argument that s 148(1) did not generally contemplate the management of a public-listed company. The court held that the wording of the provision as well as case law plainly did not indicate such a narrow reading of the provision.[152]

14.117 On the issue of whether Soh was "concerned in the management" of the three companies, Blumont, Asiasons and LionGold, the High Court's starting point was that the phrase is to be interpreted broadly, since the statutory objective of s 148(1) is to protect the interests of both existing and potential creditors of a business, as well as:[153]

> … protect the greater public interest to prevent the undischarged bankrupt from misusing the corporate structure for collateral purposes to the detriment of stakeholders such as the company's shareholders, the business' trading partners and suppliers, consumers, and the general public.

14.118 Following that, the court held that one would be "concerned in the management" of a corporation if he holds some level of responsibility or discretion in regard to matters which affect the company and the conduct of its affairs, or whose views are accorded some weight in the decision-making processes. The court elaborated that such a person does not have to be at the highest echelons of a company to be considered concerned in its management, nor does he need to have a formal position in the company. Additionally, a person who merely plays an advisory role in decision-making, or carries out administrative functions wholly in accordance with pre-determined policies or directions, would not be deemed to be "concerned in the management" of a corporation.[154]

14.119 On the facts, the High Court found that Soh was indeed involved in the management of the three companies. Among other things, Soh

152 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1162].
153 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1163] and [1164], citing *Yap Guat Beng v Public Prosecutor* [2011] 2 SLR 689 at [1] and [2].
154 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1165].

generally had the power to make or at least influence decisions on corporate matters, and he was substantially involved in the deals and acquisition the companies made. Accordingly, since Soh was an undischarged bankrupt, he was convicted of all three charges against him for being concerned in the management of a company while being an undischarged bankrupt.[155]

155 *Public Prosecutor v Soh Chee Wen* [2023] SGHC 299 at [1166]–[1196].