



**NUS**

National University  
of Singapore

FACULTY OF LAW

PART A BAR COURSE 2011

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CRIMINAL LAW

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# STUDY GUIDE

## 1. Course Description

Welcome to the world of Singaporean criminal law. This course introduces students to the principles of criminal liability in Singapore through the study of selected portions of the Penal Code and other criminal statutes. Although the Penal Code purports to "codify" the criminal law of Singapore, there are many other statutes which also create criminal liability, for example, the *Vandalism Act*, *Prevention of Corruption Act* and the *Misuse of Drugs Act*. Some of these will be referred to during the course such as the *Road Traffic Act* and the *Arms Offences Act*.

I have selected a few representative areas in criminal law in which the "Singapore genius" shines through – attitudes and positions which might not be familiar to someone who has studied only English, Australian or North American criminal law. These areas deal with the "general principles" of criminal responsibility, namely, the fault and physical elements of a crime (situated in homicide offences), defences, ancillary and joint liability. I have also arranged two special guest lectures by senior public prosecutors from the Attorney-General's Department.

The *Penal Code* was first enacted in Singapore as the Straits Settlements Penal Code in 1871 (Ordinance 4 of 1871). It is based on the Indian Penal Code of 1860. As such, references to Indian cases and to cases from jurisdictions which follow the Indian Penal Code such as Malaysia will be made from time to time in the course.

In addition, cases and statutory provisions from other jurisdictions (mainly England, Australia and Canada) will be introduced for a comparative perspective of some areas of the law. By so doing, I hope to tap into your previous study of criminal law outside of Singapore.

## 2. Mode of assessment

Your final grade assessed will be based on a final examination:

- Final exam – 100%
  - The examination will be a open-book examination. Candidates will be allowed to bring in any related materials subject to non-infringement of copyright rules. Electronic devices will not be allowed.

The two hour examination paper will comprise a mixture of hypothetical problem and essay-type questions, and case analysis. Students will be required to answer two out of three questions.

All materials covered in the course are examinable.

You will be assessed on:

- Identification of the issues
- Comprehension of the law
- Ability to present coherent arguments
- Organisation and presentation of your written answer

### 3. Course Materials

Selected provisions of the *Penal Code* (Cap 224, 1985 Rev Ed) as well as other relevant statutes can be found in the prescribed textbook (see below) and most will be reproduced in the lecture handouts. Statutes may also be found online on LAUNET or at <http://statutes.agc.gov.sg/>.

There are two prescribed books for this course. The first is the textbook by Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 2007) [referred to as “YMC” in your seminar sheets].

The second is the casebook by Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law Casebook Companion* (LexisNexis, 2008) [referred to as “CB” in your seminar sheets].

Both books can be found on the open shelves and in the RBR section of the Law Library, and are available from the BTC NUS Co-op. Students are able to purchase both books as a bundle at a substantially reduced student price.

There are many other textbooks and commentaries available in the library. Care should be taken when using books from other jurisdictions as the provisions in the statutes and the law stated therein may differ from Singaporean law.

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**SEMINAR SHEETS****Seminar 1****Topic 1A: An Overview of Singaporean Criminal Law**

YMC, Chapters 1 and 38.

*Study Questions*

1. What does it mean to have a codified system of law?
2. Explain what are the advantages and disadvantages to a codified system of criminal law compared to the common law system.
3. Draw up a list of case authorities in order of precedence, commencing with binding, to highly persuasive, to persuasive.
4. Have a quick look at the provisions of the Penal Code and identify some provisions that need to be revised. Explain why there is a need to amend these provisions and how they should be amended.
5. "It is high time that our Penal Code, a nineteenth century European innovation, be replaced by an entirely new Code which accurately reflects the thinking, values and notions of criminal justice of present day Singaporeans." Discuss.

## SEMINAR SHEETS

**Seminar 1****Topic 1B: Anatomy of a Crime*****Mens Rea* or Fault Elements of a Crime**

*Ismail bin Hussin v PP* [1953] MLJ 48, CB 18

*Tan Buck Tee v PP* [1961] MLJ 176, CB 15 (R)

*Ng Keng Yong v PP* [2004] 4 SLR 89, [2004] 4 SLR(R) 89, CB 22

*Yeo Ah Seng v PP* [1967] 1 MLJ 231

*Lim Poh Eng v PP* [1999] 2 SLR 16, [1999] 1 SLR(R) 428

***Actus Reus* or Physical Elements of a Crime**

*R v Falconer* (1990) 171 CLR 30, CB 2

*R v Taktak* (1988) 14 NSWLR 226, CB 6

YMC, Chapters 3 and 4.

*Study Questions*

1. How would you define “intention” for the purposes of criminal liability? How would you distinguish “intention” from “recklessness”?
2. What are the similarities and differences between “knowledge”, “rashness” and “recklessness”?
3. What is the difference between “negligence” and other fault elements such as “intention”, “knowledge” and “recklessness”?
4. Does the voluntariness or otherwise of conduct depend on whether the actor was conscious at the time such conduct occurred?
5. Should it be possible for a crime to comprise solely a fault element without an accompanying physical element? Why/Why not?
6. Should it be possible for a crime to comprise solely a physical element without an accompanying fault element? Why/Why not?
7. What is the meaning of the term “offence” found in s 43 of the Penal Code? (See s 40(1) of the Penal Code).
8. Answer the questions at the end of the above mentioned CB case extracts, and attempt problem solving questions 1 and 2 on CB 59.

## SEMINAR SHEETS

**Seminar 2****Topic 2: An Overview of the Singaporean Criminal Justice System**

YMC, Chapters 2.

Michael Hor, "Singapore's Innovations to Due Process" (2001) 12 *Criminal Law Forum* 25 (available on IVLE course website.)

*Study Questions*

1. What is the difference between criminal law and civil law (i.e. contract and tort law)?
2. What are the pitfalls, if any, of the practice of compounding of offences, and of plea negotiations?
3. Explain in your own words how labelling theorists view pre-trial decision-making.
4. Identify the instances when 'discretion' plays a role in the criminal justice system. Is such discretion an inevitable part of any criminal justice system? What are the dangers presented by the exercise of such discretion, and how might they be circumvented?
5. State, giving reasons, whether you prefer the Singaporean position of placing the legal burden of proving a defence on the accused, or the English system of placing only an evidential burden on him or her.
6. What concerns do civil libertarians have in relation to legislation such as the *Criminal Law (Temporary Provisions) Act* and the *Misuse of Drugs Act*?
7. Is it possible to reconcile the various aims (or theories) of punishment?
8. Which, among the aims of punishment, do you think most holds sway in the Singaporean context? Is this defensible?
9. Discuss the following comment by then Attorney-General Chan Sek Keong in a public lecture delivered in 1996:

"There is a case for arguing that the fundamental tenet of the criminal justice system of Singapore should simply be that the factually guilty accused should suffer punishment according to law and that therefore the criminal process should primarily be directed to this end. ... What is perhaps more important is the integrity of the people who operate the system, ie, the investigative and the prosecutorial agencies, and the ultimate supervisor of the criminal process, the judiciary. In other words, it is people who make a system fair and just, and not the reverse."
10. Should the bulk of the decision as to guilt or innocence be taken at the trial, or is it defensible for it to be taken at the pre-trial stages?
11. In your own opinion, what are the greatest challenges facing the Singapore criminal justice system today?

## SEMINAR SHEETS

**Seminar 3****Topic 3: Structure of Homicide Offences; Fault for Culpable Homicide**

Penal Code, ss. 299-304A

Road Traffic Act, s 66

*PP v Mahfar bin Sairan* [2000] 4 MLJ 791, CB 85

*State of Andhra Pradesh v Rayavarapu Punnayya* AIR 1977 SC 45, CB 90

*Tham Kai Yau v PP* [1977] 1 MLJ 174, CB 94

*Tan Chee Wee v PP* [2004] 1 SLR 479, [2004] 1 SLR(R) 479, CB 97

*Virsa Singh v State of Punjab* AIR 1958 SC 465, CB 100

*PP v Lim Poh Lye* [2005] 4 SLR 582, [2005] 4 SLR(R) 582, CB 115

*Tan Cheng Eng v PP William* [1970] 2 MLJ 244, CB 119

*Emperor v Dhirajia* [1940] All 647, CB 121

YMC, Chapter 8, paras [8.1] – [8.24]

YMC, Chapter 9, paras [9.22] - [9.85]

*Study Questions*

1. What do you understand by the observation that “the fault elements of s 299, 300 and 304A” of the Penal Code constitute a schematic approach towards criminal responsibility”?
2. Are the distinctions between the various clauses of ss 299 and 300 too fine?
3. Describe the fault requirement for s. 300(c) Penal Code. Does this fit well with other provisions of s. 300?
4. Would the problems in the interpretation of s. 300(c) Penal Code be solved by making the death penalty discretionary?
5. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 4****Topic 4: Fault for Other Homicide Offences; Punishment; Homicide Law Reform**

Penal Code, ss 279 and 304A

Road Traffic Act, ss 64-66

*PP v Teo Poh Leng* [1992] 1 SLR 15, [1991] 2 SLR(R) 541, CB 124

*S Balakrishnan v PP* [2005] 4 SLR 249, [2005] 4 SLR(R) 249, CB 129

*Lim Poh Eng v PP* [1999] 2 SLR 116, [1999] 1 SLR(R) 428, CB 132

*Seah Siak How v PP* [1965] 1 MLJ 53, CB 138

*PP v Zulkifli bin Omar* [1998] 6 MLJ 65, CB 140

*Ng Keng Yong v PP* [2004] 4 SLR 89, [2004] 4 SLR(R) 89, CB 22

*Lim Chin Poh v PP* [1969 – 1971] SLR 247, [1968-1970] SLR(R) 483, CB 143

*PP v Poh Teck Huat* [2003] 2 SLR 299, [2003] 2 SLR(R) 299

YMC, Chapter 8 (paras [8.25] – [8.42]).

YMC, Chapter 10 (paras [10.1] – [10.10]; [10.15] – [10.65]; [10.69] – [10.82]).

*Study Questions*

1. According to the case law, what is the difference between a “rash” and a “negligent” act? Do you agree with the way this distinction is drawn?
2. Do you agree with the contention by YMC (at paras [10.9], [10.10], [10.69]) of not excluding cases of ‘direct violence’ from the ambit of s 304A?
3. Do you agree with the present approach of the Singapore courts towards the interpretation of criminal negligence?
4. English law has developed the concept of gross negligence as the basis for criminal liability. Is this workable?
5. What is the difference between “negligence”, “rash”, “reckless”, and “dangerous”?
6. Does *Poh Teck Huat* contradict itself where it was said that “criminal rashness and criminal negligence involve two different states of mind”, but that “negligence does not end nicely where rashness begins and there is a certain measure of overlap”?
7. Explain the difference between “rashness” in s 304A and (i) knowledge that an act is so imminently dangerous that it must in all probably cause death (s 300(d); and (ii) knowledge that an act is likely to cause death (cl 3 of s 299).
8. Consider the range of penalties in s 300(d) of the Penal Code, s 299 limb 3 of the Penal Code, s 304A of the Penal Code, and s 66 of the Road Traffic Act. Is this justified?
9. State, giving reasons, whether you agree with the various law reform proposals listed in YMC paras [10.63] – [10.65]; and [10.70] – [10.82].
10. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 4****Topic 5: Principles of Causation**Causation in Murder and Culpable Homicide not amounting to Murder

Penal Code, s 299 Explanation 1 and 2

*Hallett v R* [1969] SASR 141, CB 25

*R v Malcherek*; *R v Steel* [1981] 2 All ER 422, CB 33

*R v Smith* [1959] 2 All ER 193

*Shaiful Edham bin Adam v PP* [1999] 2 SLR 57, [1999] 4 SLR(R) 442

*R v Blaue* [1975] 3 All ER 446

Causation in Penal Code, s. 304A

Penal Code, s. 304A

*Ng Keng Yong v PP* [2004] 4 SLR 89, [2004] 4 SLR(R) 89, CB 29

*Lee Kim Leng v R* [1964] MLJ 285

YMC, Chapter 5.

YMC, Chapter 10 paras [10.11] – [10.14].

*Study Questions*

1. Critically evaluate YMC's use of foreign case authorities to help clarify the principles of causation under the Indian Penal Code.
2. State, giving reasons, whether or not you agree with YMC's contention that the reasonable foresight test is superior to the substantial factor test to resolve issues of intervening causes in the criminal law.
3. Answer the questions at the end of the above mentioned CB case extracts, and attempt the problem solving questions 3 and 4 on CB 59 - 60.

## SEMINAR SHEETS

**Seminar 4****Topic 6: Concurrency of Fault and Physical Elements**

*Muhammad Radi v PP* [1994] 2 SLR 146, [1994] 2 SLR(R) 146, CB 38

*Shaiful Edham bin Adam v PP* [1999] 2 SLR 57, [1999] 2 SLR(R) 442, CB 41

*R v Miller* [1983] 2 AC 161, CB 53

*Thabo Meli v R* [1954] 1 All ER 373

*Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439

YMC, Chapter 6.

*Study Questions*

1. Evaluate the soundness of the Privy Council decision in *Thabo Meli*. Might the court have manipulated legal principles to reach the desired result?
2. Can the problem of concurrence be solved by making a distinction between deaths which are intended or known and deaths which are not intended or unknown? Consider s. 301 Penal Code which reads as follows:

**301.** *If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.*
3. Identify the 'selling points' of YMC's analysis in Chapter 6 which you think might persuade our courts to adopt their proposed moral congruence approach to problems of concurrence.
4. Do you agree with YMC that concurrence could be made out even where there was no preconceived plan, and so long as one of the prescribed fault elements of the offence in question was proven?
5. Answer the questions at the end of the above mentioned CB case extracts, and attempt problem solving question 5 on CB 60.

## SEMINAR SHEETS

**Seminar 5****Topic 7A: Introduction to Criminal Defences****Burden of proof**

Evidence Act, ss. 103, 107

*Jayasena v The Queen* [1970] AC 618, CB 232

**General and Special Exceptions**

Chapter IV, Penal Code

Exceptions to s 300, Penal Code

*Subramaniam v PP* [1956] MLJ 220

YMC, Chapter 16.

YMC, Chapter 2, paras [2.23] – [2.27].

*Study Questions*

1. Who has the burden of proving a defence in Singapore law?
2. Are there any convincing reasons why it is the prosecution who must prove the commission of a crime, but the accused who must prove a general or special exception under the Penal Code?
3. Why are defences which *ipso facto* involve casting doubt on an element of a crime not exempt from the rule that it is the accused who must prove a defence? Take for example, the defence of mistake of fact under s 79 of the Penal Code.
4. Might there be circumstances in which it would be desirable for a particular offence to exclude the operation of the “general exception” under the Penal Code? Take, for example, the Internal Security Act which stipulates that the defence of duress under s 94 of the Code is inapplicable for the purposes of the offences under that legislation.
5. Explain in your own words Donald Horowitz’s comment in his article “Justification and Excuse in the Program of the Criminal Law” (1986) 49 *Law and Contemporary Problems* 109, that “[t]o recognize a justification defense is effectively to change the law and ... to weaken the prohibitions of the criminal law”.
6. Provide factual situations which illustrate the distinction between justifications and excuses.
7. Suppose D commits an act that D honestly and reasonably believes is entirely unjustified, but in fact, unbeknown to D, the act is “objectively” right and creates positive social value. Should D be justified, excused, or neither?
8. In a separate scenario, suppose E honestly and reasonably believes that the conduct is justified, but who has made a mistake. Subjectively, E is blameless, but objectively

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**SEMINAR SHEETS**

negative social value resulted because in fact the victim need not have been harmed to produce positive value. Should E be justified, excused, or neither?

9. Explain the role played by the concept of “reasonableness” in criminal defences.
10. Answer the questions at the end of the case extract of *Jayasena*

**Topic 7B:            Unsoundness of Mind**

Penal Code, s. 84

Criminal Procedure Code, ss 251 and 252

*PP v Rozman bin Jusoh* [1995] 3 SLR 317, [1995] 2 SLR(R) 879, CB 340

*PP v Chia Moh Heng* [2003] SGHC 108, CB 346

YMC, Chapter 24.

*Study Questions*

1. Are juries more likely to believe the defence expert than judges? If so, why? (Trial by jury existed in Singapore until 1960).
2. Is the s 84 formulation better or worse than Macaulay’s original version which reads:

“Nothing is an offence which a person does in consequence of being mad or delirious at the time of doing it.”

Specifically, if an accused had committed an alleged crime “in consequence of” unsoundness of mind, why does the accused have to show further that he or she suffered from one of the incapacities specified in s 84?
3. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 5****Topic 7C: Diminished Responsibility**

Penal Code, Exception 7 to s. 300

*Chua Hwa Soon, Jimmy v PP* [1998] 2 SLR 22, [1998] 1 SLR(R) 601, CB 380  
*G Krishnasamy Naidu v PP* [2006] 4 SLR 874, [2006] 4 SLR(R) 874, CB 384  
*PP v Tengku Jonaris Badlishah* [1998] SGHC 401, CB 390

YMC, Chapter 27.

*Study Questions*

1. Explain the difference between unsoundness of mind and diminished responsibility as a defence in terms of:
  - a. The mental condition of the accused
  - b. The cause of the mental condition
  - c. The severity of the mental condition
  - d. The offences for which the defence applies
  - e. The effect of a successful defence
2. Should diminished responsibility be a defence as well for other offences?
3. To what extent is it practicable for a court to distinguish between:
  - a. substantial and insubstantial impairment of mental responsibility?
  - b. a situation where the accused “did not” as opposed to “could not” resist his or her impulse?
4. Are there sound reasons for:
  - a. recognising irresistible impulse for diminished responsibility but not for unsoundness of mind?
  - b. a successful plea of diminished responsibility to result in imprisonment and of unsoundness of mind to result in indefinite detention?
5. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 5****Topic 7D: Intoxication**

Penal Code, ss. 85, 86

*PP v Tan Ho Teck* [1987] SLR 226, [1987] SLR(R) 88, CB 363

*Juma'at bin Samad v PP* [1993] 3 SLR 338, [1993] 2 SLR(R) 327, CB 370

*Tan Chor Jin v PP* [2008] 4 SLR 306, [2008] 4 SLR(R) 306, CB 372

*PP v Tengku Jonaris Badlishah* [1998] SGHC 401, CB 390

YMC, Chapter 25.

*Study Questions*

1. When might intoxication be pleaded as a defence under the Penal Code?
2. Why should involuntary intoxication under s 85(2)(a) of the Penal Code depend on the "malicious or negligent act" of another? Is not the discarded definition of "without his knowledge or against his will" more to the point?
3. Does the formulation of involuntary intoxication under s 85(2)(a) do justice to the intuitive moral distinction between involuntary intoxication (more deserving of sympathy) and voluntary intoxication (less deserving of sympathy)? What is to be made of the recognition of voluntary intoxication under s 86(2)?
4. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 6****Topic 8A: Provocation**

Penal Code, Exception 1 to s. 300

*PP v Kwan Cin Cheng* [1998] 2 SLR 345, [1998] 1 SLR(R) 434, CB 297

*Che Omar bin Mohd Akhir v PP* [2007] 4 MLJ 309, CB 310

*Seah Kok Meng v PP* [2001] 3 SLR 135, [2001] 2 SLR(R) 24

*PP v Sundarti Supriyanto* [2004] 4 SLR 622, [2004] 4 SLR(R) 622, paras [146] – [169] only

YMC, Chapter 29.

*Study Questions*

1. What is the underlying rationale for the plea of provocation? Do the elements of the defence as specified in Exception 1 to s 300 of the Penal Code reflect this rationale?
2. Why is provocation not available as a defence to all types of crimes?
3. What exactly is the psychological state of an accused who had acted “whilst deprived of the power of self-control”?
4. What is meant by “sudden” provocation? Does this requirement of suddenness exclude the defence in cases where there was a time lapse between the provocation and the retaliation?
5. Might the reason why we recognise some personal characteristics of the accused but not others when applying the ordinary person test, be due to a moral assessment of whether that particular characteristic evoked our sympathy?
6. Has the proportionality between the provocation and the retaliation any part to play when deciding whether the defence of provocation should succeed? Is an accused who has lost self-control likely to retaliate proportionately or disproportionately?
7. The three provisos to Exception 1 stipulate that certain types of conduct can never be provocation for the purpose of the defence. Is there an under-girding rationale for these provisos?
8. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 6****Topic 8B: Private Defence and Exceeding Private Defence**

Penal Code, ss. 96-106, Exception 2 to s. 300

*PP v Abdul Manap* [1956] MLJ 214, CB 241

*PP v Dato Balwant Singh (No 2)* [2003] 3 MLJ 395, CB 244

*Roshdi v PP* [1994] 3 SLR 282, [1994] 3 SLR(R) 1, CB 293

*Soosay v PP* [1993] 3 SLR 272, [1993] 2 SLR(R) 670, CB 290

*PP v Seow Khoon Kwee* [1989] 2 MLJ 100

*Tan Chor Jin v PP* [2008] 4 SLR 306, [2008] 4 SLR(R) 306

YMC, Chapters 20 and 21.

*Study Questions*

1. Regarding s 99(3), can it be that, so long as the accused apprehended danger and could have had recourse to public authorities *any time in the past*, the right to private defence no longer arises?
2. Why is it not sufficient for an accused claiming the right of private defence to show that he or she actually apprehended the danger (whether such apprehension was reasonable or not), and genuinely believed that his or her response was necessary (whatever a court may later think)?
3. The plea of exceeding private defence is confined in its operation to a charge of murder, Why does it not, like the defence of provocation, operate as a defence to lesser charges such as causing hurt or grievous hurt?
4. If a judge is minded to do so, how might he or she interpret the private defence provisions of our Penal Code so as to take into account a battered female defendant's experiences?
5. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 7****Topic 9A: Mistake of Fact**

Penal Code, ss. 76, 79, 52

*PP v Teo Eng Chan* [1987] SLR 475, [1987] SLR(R) 567, CB 262

*Tan Khee Wan Iris v PP* [1995] 2 SLR 63, [1995] 1 SLR(R) 723, CB 72, 265

*PP v Mohd Amin bin Mohd Razali* [2002] 5 MLJ 406, CB 266

*Abdullah v R* [1954] MLJ 195

YMC, Chapter 17 (excluding paras [17.34] – [17.43], [17.45])

*Study Questions*

1. Why should not a person be excused whose mistaken belief of facts was genuinely held even though such a belief may have been unreasonable to the objective observer?
2. Even if it is thought that a reasonable mistaken belief is required for a complete defence, should there not be a significant reduction in culpability and punishment for a person who had acted on the basis of an honest albeit unreasonable mistake of fact?
3. Why should an accused person who mistakenly believes that he or she was committing a different but far less serious offence (and therefore not “justified by law”) be deprived of a defence under s 79 of the Penal Code?
4. The view has been expressed that mistakes of fact (i.e. a positive belief) ought to be excused but not ignorance of facts (i.e. an absence of knowledge without any particular belief). Do you agree?
5. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 7****Topic 9B: Strict Liability**

Penal Code, ss. 40(2), 52 and 79

*PP v Teo Kwang Kiang* [1992] 1 SLR 9, [1991] 2 SLR(R) 560, CB 65

*MV Balakrishnan v PP* [1998] SGHC 416, CB 69

*Tan Khee Wan Iris v PP* [1995] 2 SLR 63, [1995] 1 SLR(R) 723, CB 73

*Tan Cheng Kwee v PP* [2002] 3 SLR 390, [2002] 2 SLR(R) 122

*Gammon (HK) Ltd v AG of HK* [1985] AC 1

*Lim Chin Aik v The Queen* [1963] AC 160

*Comfort Management Pte Ltd v PP* [2003] 2 SLR 67, [2003] 2 SLR(R) 67

YMC, Chapter 7

*Study Questions*

1. What are the supposed justifications for having strict liability offences, and are those justifications warranted?
2. Judicial consideration of claims of mistake of fact in relation to strict liability offences is a complicated one with several competing approaches devised without the courts explaining how the ultimate choice was made. Might the law be better off if s 79 of the Penal Code were invariably applied to all such cases? Such a solution will mean that, unless there is explicit statutory provision, there will no longer be offences of strict liability. Is this politically acceptable?
3. Answer the questions at the end of the above mentioned CB case extracts, and attempt the problem solving question on CB 81.

## SEMINAR SHEETS

**Seminar 8****Topic 10A: Abetment**

Penal Code, ss 107-109, 111,113, 115, 116.

**Actus Reus**Abetment by Instigation

*S Balakrishnan v PP* [2005] 4 SLR 249, [2005] 4 SLR(R) 249, CB 396

*PP v Tee Tean Siong* [1963] MLJ 201

*Baby John v State* AIR 1953 Tra – Co 251

Abetment by Conspiracy

*Ang Ser Kuang v PP* [1998] 3 SLR 909, [1998] 3 SLR(R) 316, CB 401

*Lee Yuen Hong v PP* [2000] 2 SLR 339, [2000] 1 SLR(R) 604

*Er Joo Nguang v PP* [2000] 2 SLR 645, [2000] 1 SLR(R) 756

*PP v Yeo Choon Poh* [1994] 2 SLR 867, [1993] 3 SLR(R) 302

Abetment by Aiding

*S Balakrishnan & Anor v PP* [2005] 4 SLR 249, [2005] 4 SLR(R) 249, CB 396

*Varatharajalu v PP* [1960] MLJ 158

**Mens Rea**

*S Balakrishnan & Anor v PP* [2005] 4 SLR 249, [2005] 4 SLR(R) 249, CB 396

*Ang Ser Kuang v PP* [1998] 3 SLR 909, [1998] 3 SLR(R) 316, CB 401

*Daw Aye Aye Mu v PP* [1998] 2 SLR 64, [1998] 1 SLR(R) 175

*PP v Hendricks Glen Conleth* [2003] 1 SLR 426, [2003] 1 SLR(R) 426

Where the person abetted does not commit the offence

*Chua Kian Kok v PP* [1999] 2 SLR 542, [1999] 1 SLR(R) 826, CB 403

Where a different act is done or different effect is caused

*Lee Chez Kee v PP* [2008] 3 SLR 447, [2008] 3 SLR(R) 447, CB 429 paras [238] –[242], [251]

YMC, Chapter 34 (pp 760 – 780)

*Study Questions*

1. Can one instigate a person who does not understand what is being communicated to him because he does not understand the language or is deaf?
2. Abetment by conspiracy explicitly requires an overt act or illegal omission in furtherance of the conspiracy. Does the overt act have to be an act which forms part of the physical elements (i.e. *actus reus*) of the offence, or can it be any act from which a conspiracy at work may be inferred?
3. What must a person know of the substantive offence before he or she can be liable for abetment of that offence by intentional aiding?

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**SEMINAR SHEETS**

4. Describe the fault (i.e. *mens rea*) needed for the offence of abetment. Does it differ depending on whether the abetment was by instigation, conspiracy or aiding?
5. D supplies X with a knife. D knows that the knife will be used for some illegal activity but does not know what exactly it is. X uses the knife to commit robbery. Would D be liable for abetment of robbery by intentional aiding? Should he be?
6. Should the fault for abetment be lowered in respect of certain crimes such as corruption or drug offences in view of the State's strong interest in eliminating them? Conversely, should the fault for abetment be increased for offences carrying the mandatory death penalty in view of the seriousness of the penalty and the court's inability to vary the sentence?
7. State, giving reasons, why you think the test for the "probable consequence" of the abetment under s 111 of the Penal Code should be objective or subjective.
8. Is there a difference between a "different act" in s 111 and a "different effect" in s 113 of the Penal Code? Should there be?
9. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 8****Topic 10B: Criminal Conspiracy**

Penal Code, ss. 120A, 120B.

*Kannan s/o Kunjiraman v PP* [1995] 3 SLR 757, [1995] 3 SLR(R) 294, CB 407

*Nomura Taiji v PP* [1998] 2 SLR 173, [1998] 1 SLR(R) 259

*Lau Song Seng v PP* [1998] 1 SLR 663, [1997] 3 SLR(R) 772

*Emperor v Hiremath* AIR 1940 Bom 365

*DPP v Nock* [1978] AC 979

YMC, Chapter 34 (pp 780 – 800)

S Yeo, "Clarifying Impossible Attempts and Criminal Conspiracies" (2007) 19 *Singapore Academy of Law Journal* 1 (part on criminal conspiracies only)

*Study Questions*

1. Given the offence of criminal conspiracy, is abetment by conspiracy under s 107 of the Penal Code still relevant?
2. Do you agree with the rationale for the wide scope of criminal conspiracy, namely, on account of the increased danger posed by people acting together?
3. Is it defensible to extend criminal conspiracy to tortious acts?
4. Might two persons be liable for criminal conspiracy for agreeing to breach a contract without just cause? Should they be?
5. The Law Commission of India in its 42<sup>nd</sup> report on the Indian Penal Code (1971) proposed limiting the offence of criminal conspiracy to more serious offences i.e. those attracting the death penalty or a term of two years' imprisonment and upwards. Should this amendment be made to our Penal Code?
6. If one can be liable for conspiring to commit an offence which is impossible to accomplish, why should there not be liability where one of the two persons involved feigns agreement (as in *Kannan s/o Kunjiraman v PP* [1995] 3 SLR 757)?
7. Answer the questions at the end of the above mentioned CB case extracts, and attempt problem solving question 1 on CB 420 (conspiracy only)

## SEMINAR SHEETS

**Seminar 9****Topic 11A: Common Intention**

Penal Code, ss. 34

*Daniel Vijay s/o Katherasan v PP* [2010] 4 SLR 1119

*Kho Jabing v PP* [2011] SGCA 24

*PP v Lim Poh Lye* [2005] 4 SLR 582, [2005] 4 SLR(R) 582, CB 425

*Lee Chez Kee v PP* [2008] 3 SLR 447, [2008] 3 SLR(R) 447, CB 429

*R v Vincent Banka* [1936] MLJ 53

*Mimi Wong v PP* [1972] MLJ 75

*Shaiful Edham bin Adam v PP* [1999] 2 SLR 57, [1999] 1 SLR(R) 442

*PP v Tan Lay Heong* [1996] 2 SLR 150, [1996] 1 SLR(R) 504

*Asogan Ramesh s/o Ramachandren v PP* [1998] 1 SLR 286, [1997] 3 SLR(R) 201

*Too Yin Sheong v PP* [1999] 1 SLR 682, [1998] 3 SLR(R) 994; and [1998] SGHC 286

*PP v Gerardine Andrew* [1998] 3 SLR 736, [1998] 3 SLR(R) 421

*Ibrahim bin Masod v PP* [1993] 3 SLR 873, [1993] 3 SLR(R) 438

YMC, Chapter 35 (pp 801-820)

Chen Siyuan, "The Final Twist in Common Intention?" (2011) Sing JLS (forthcoming July 2011 issue)

*Study Questions*

1. Must the parts played by different persons involved in the offence be identified for the purpose of joint liability under s 34 of the Penal Code?
2. State, giving reasons, whether you think the decision in *Daniel Vijay* requiring the secondary offender, along with the actual doer, to have intended to commit the collateral offence, is preferable to the decision in *Lee Chez Kee*.
3. Is it just for a secondary offender to be convicted and punished for an offence carrying the mandatory death penalty for murder on the basis that he or she "knew of the likelihood" of the criminal act constituting the collateral offence (as held in *Lee Chez Kee*)?
4. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 9****Topic 11B: Common Object and Other Forms of Constructive Liability**In prosecution of the common object of an unlawful assembly

Penal Code, ss. 40(3), 141, 142, 143, 146 and 149

*Lee Chez Kee v PP* [2008] 3 SLR 447, [2008] 3 SLR(R) 447, CB 429, paras [243] – [247]

*Osman bin Ramli v PP* [2002] 4 SLR 1, [2002] 2 SLR(R) 959

*Ong Chin Seng v R* [1960] MLJ 34

*PP v Fazely bin Rahmat* [2003] 2 SLR 184, [2003] 2 SLR(R) 184 and [2002] 4 SLR 655, [2002] 2 SLR(R) 385

YMC, Chapter 35 (pp 821 – 829)

Gang robbery with murder

Penal Code, ss. 390, 391 and 396

*Lee Chez Kee v PP* [2008] 3 SLR 447, [2008] 3 SLR(R) 447, CB 429, para [252]

*Prasong Bunsom v PP* [1995] 3 SLR 433, [1995] 3 SLR(R) 15

YMC, Chapter 35 (pp 829 – 832)

Arms Offences

Arms Offences Act, ss. 2, 4A and 5

*Remli Senallagam v PP* [1992] 1 SLR 628, [1992] 1 SLR(R) 137

YMC, Chapter 35 (pp 832 – 836)

Reforming the law of joint liability

YMC, Chapter 35 (pp 836 – 840)

*Study Questions*

1. Is there a difference between “common intention” and “common object”? Why/why not?
2. In *PP v Fazeley bin Rahmat* the words “in prosecution of the common object of that assembly” was interpreted as requiring proof of subjective knowledge by the accused of the gang’s common object to cause hurt by dangerous weapons before constructive liability could be imposed. Is this any different to the approach towards constructive liability under s 34?

## SEMINAR SHEETS

3. Is the requirement of subjective knowledge satisfied by proof that the accused knew that there was a *possibility* that the further offence may be committed by another member of the unlawful assembly? Or must there be knowledge of a *probability* that the further offence would be committed? Or must there be knowledge that the further offence would *definitely* be committed?
4. Must the further offence that is contemplated be the same offence that is actually committed? What if the offences, though different, are comparable in nature, for example, persons in a fight plan to cause grievous hurt but a victim is killed?
5. When would a person be considered to be a member of an unlawful assembly?
6. In what circumstances would presence be regarded as sufficient to render a person a member of an unlawful assembly?
7. Should involuntary withdrawals from an unlawful assembly, such as being rendered unconscious by being hit on the head, be sufficient to render one no longer a member of an unlawful assembly?
8. As a matter of social policy, should the law allow a defence of withdrawal from constructive liability? What are the arguments for and against such a defence?
9. Should the reason for the withdrawal be relevant? Should a distinction be made between a person who experiences a genuine change of heart because he appreciates the moral wrongness of his conduct with the person who changes his mind because he encounters police at the scene of the crime?
10. Does s 396 of the Penal Code require that (i) the persons involved know that murder may be committed by one of their number during the gang robbery? (ii) the persons involved in the gang robbery be physically present at the commission of the murder?
11. Is the reach of liability under s 396 of the Penal Code unjustifiably broad, or can it be justified considering the number of persons involved and the fact that robbery comes with a degree of personal violence?
12. How should the term “accomplice” in s 5 of the Arms Offences Act be understood?
13. Can it be argued that it should be easier to impose constructive liability in situations involving firearms (where severe injuries are common) than in less dangerous situations covered by ss 34, 149 or 396 of the Penal Code?
14. Do you agree that the different approaches used towards constructive liability in the criminal law are unnecessarily confusing, resulting in unfairness to the accused? If so, how should the different approaches to constructive liability be replaced?
15. Answer the questions at the end of the above mentioned CB case extracts.

## SEMINAR SHEETS

**Seminar 10****Topic 12: Attempts to Commit Offences**

Penal Code, ss. 121, 307, 308, 393, 511

*Chua Kian Kok v PP* [1999] 2 SLR 542, [1999] 1 SLR(R) 826, CB 410

*Munah binte Ali v PP* [1958] MLJ 159, CB 417

*Thiangiah v PP* [1977] 1 MLJ 79

*State of Maharashtra v Mohd Yakub* AIR 1980 SC 111

*Om Parkash v State of Punjab* AIR 1961 SC 1782

*Queen Empress v Mangesh Jiva'ji* (1887) ILR 11 Bom 376

*Asgarali Pradhania v Emperor* (1933) ILR 61 Cal 54

YMC, Chapter 36

S Yeo, "Clarifying Impossible Attempts and Criminal Conspiracies" (2007) 19 *Singapore*

*Academy Law Journal* 1 (part on attempts only)

*Study Questions*

1. Should there be any distinction in the level of punishment between a person who attempts to commit an offence and one who succeeds?
2. Is it possible to attempt to commit an offence by an illegal omission?
3. Do the case authorities enunciate a test for deciding if the physical elements (i.e. *actus reus*) of a criminal attempt has been fulfilled? Or is it so vague that there is no guide at all?
4. Section 511 of the Penal Code plainly states that an attempt involves "any act towards the commission of the offence". Is it correct to interpret this provision as excluding acts of preparation from attempts to commit an offence?
5. The test in *State of Maharashtra v Mohd Yakub* AIR 1980 SC 111 is very similar to the "unequivocality test" formerly used in English law where the accused would only be liable if his or her actions unequivocally indicated his or her purpose. In *Mohd Yakub*, the actions must "manifest a clear intention to commit the offence aimed". Do you think it is right to introduce the accused's state of mind in this way to assess if his or her conduct suffices for it to be considered an attempt to commit an offence?
6. Should we be less strict with the *actus reus* of an attempt to commit an offence if the intention of the doer is clear and the offence grave?
7. What is meant by to "embark on the crime proper"? Does it require the accused to actually engage in bringing about some *actus reus* element of the substantive offence?
8. Suppose that Dr X has been extremely negligent in his treatment of his patient. The patient would have died if not for a timely intervention by another doctor. Can Dr X be charged with attempted causing of death by a negligent act under s 304A read with s 511 of the Penal Code?
9. Consider the proposals by YMC in paras [36.58] and [36.59] to reform the law of attempt. Do you agree with their proposals? Why or why not?
10. Answer the questions at the end of the above mentioned CB case extracts.