

lawyer's touch. At present one is disappointed by the almost complete lack of reference to the many interesting decided cases on the topics.

The book is well-written but at page 87 there is the odd sentence, "hence the Chair must have come under existence before X filled it" and at page 7 should not a typical example be "is" rather than "are".

Unfortunately, there are a number of misprints, some of which are set out below:—

"Butterose J." should be Buttrose J. at pages 43 and 44.

"exhausitive" at page 82 should be "exhaustive".

"cause" at page 88 should be "canon".

"principal" at page 93 should be "principle".

"Dawning M.R." at page 110 should be "Denning M.R.".

"CONVETIBLE" at page 130 should be "CONVERTIBLE".

"DIVIDENTS" at page 143 should be "DIVIDENDS".

"on sense" at page 146 should be "no sense".

"pruposes" at page 219 should be "purposes".

Ahmad Ibrahim

### THE PENAL CODES OF SINGAPORE AND THE STATES OF MALAYA

Volume 1 by Koh Kheng Lian and Myint Soe  
[Singapore; Law Book Company of Singapore and Malaysia,  
1974; XV and 255 pp. \$54.00]

This book by two members of the Faculty of Law, University of Singapore, is to be welcomed and as Mr. David Marshall says in his Preface it is hoped that this book will encourage other academic lawyers in Singapore and in Malaysia.

The present work is the first volume and apart from Chapter XVI which deals with homicide by negligence, it is concerned mainly with the subject of *mens rea* and the general and special exceptions in the Penal Code. It is perhaps unfortunate that the authors have confined their attention only to the Penal Codes of Singapore and the States of Malaya and therefore left out of account the Penal Codes of Sabah and Sarawak. This somewhat reduces the value of the work for students and practitioners in Malaysia. However, some cases from Sarawak, Sabah and Brunei are included in the book.

Although the book is on the Penal Code, one of the interesting topics dealt with in the book is that of the burden of proof, the law on which in Malaysia and Singapore is based on the respective Evidence Acts in the two territories. The topic is dealt with in two different Chapters of the book but unfortunately the treatment seems to be different in these two Chapters. At page 49 of the book the authors state that the burden of proof in the defence of insanity in Singapore and Malaya is fairly settled. The authors then go on to quote a number of cases which they claim lay down the principle. *P.P. v. Alang Mat Nasir* is quoted but no attempt is made to analyse the judgments in that case. Gordon-Smith J. whose judgment is not included in the book definitely stated his view in that case that "it is sufficient to ensure his acquittal for an accused to establish a reasonable doubt as to the existence of a fact, of which the burden of proof is on him". While he stated that he entirely agreed with the judgment of Whitley Ag. C.J. it would appear at least doubtful whether Whitley Ag. C.J. would have entirely agreed with him, Whitley Ag. C.J. indeed appeared to have adopted the test in *R. v. Sodeman* and his disagreement with the dissenting judge, Cussen J. (who also adopted the test in *R. v. Sodeman*) appears to be based on the facts of the case. In any event *Alang Mat Nasir's* case appears to have been overruled by *Mohamed Isa v. P.P.*, (which is quoted but not included), *Baharom v. P.P.* (1960) M.L.J. 249 which is not referred to and *Azro v. P.P.* which is quoted and included, although the part of the judgment dealing with the burden of proof is left out.

*Chia Chan Bab v. The King* is also referred to. This case was decided in Penang and, as is pointed out, was followed in *Azro v. Public Prosecutor*, also a Penang case, and in *Lee Ah Chye v. P.P.* and *Jusob v. P.P.* which are Kuala Lumpur cases. One fails to understand why the authors say that it is unfortunate that *P.P. v. Alang Mat Nasir* has been overshadowed by the later decision in *Chia Chan Bab*. On the contrary perhaps it would have been better to exclude the case of *P.P. v. Alang Mat Nasir* and to classify it with the other cases like *Lim Tong v. P.P.* and *Ng Lam v. P.P.*, which in view of the Privy Council decisions in *P.P. v. Yuvraj* and *Jayasena v. R.* are no longer good law. *Tikan bin Sulaiman v. R.* is however wrongly classified at page 50 as a case where it was decided that it is sufficient for the accused to raise a reasonable doubt whether the necessary factors exist; in that case it was stated that there should be no difference in the burden of proof between the prosecution and the defence (see the comment at p. 157). The principle of *Jayasena case* is expressed at page 50 in a negative proposition, where perhaps a positive proposition would have been clearer.

A more serious criticism arises from the difference in the treatment of burden of proof at pages 49-50 and at pages 156-159. It may be uncharitable to suggest that the comments were written at different times or by different authors. While it is clear at page 50 that the views

expressed in *Dampala's case* are no longer good law, yet at page 158, it is stated that "one point which has not been properly resolved is the effect and correctness of the Rangoon Full Bench case of *Emperor v. Dampala*. It is stated at page 50 that it is doubtful whether the views expressed in *Lim Tong v. P.P.* can still be considered good law but at page 158 *Lim Tong's case* is quoted with approval and it is stated, "Unfortunately *Lim Tong* was not discussed in *Atang Mat Nasir*". Finally despite the reference to the negative proposition in *Jayasena v. R.* at page 50, it is stated that Rose C.J. seems to have correctly summarised the law in *Soh Cheow Har v. R.* (although that summary is contrary to the views adopted in *Jayasena's case*). The Malayan case of *Looi Wooi Saik v. Public Prosecutor* (1962) M.L.J. 327 which followed *Soh Cheow Har v. R.* and was impliedly overruled by the Privy Council in *Jayasena's case* is not referred to.

The authors, of course, do not refer to one possible argument for the difference in the treatment of burden of proof in the two chapters, that is the burden of proof of insanity is different from the burden of proof of the other exceptions. This was the view taken by Thomson C.J. and the Court of Appeal in *Looi Wooi Saik v. Public Prosecutor* and *Jusoh v. Public Prosecutor*, but must now be regarded as wrong.

On a minor point, *Ng Lam v. Public Prosecutor* is wrongly described as a decision of the High Court at Negri Sembilan at page 154. It is in fact a decision of the Court of Appeal.

Chapter XVI of the books deals with homicide by negligence and all the important cases on the subject have been included. The comment at pages 242-249 gives a very interesting survey of the development of the law culminating in the cases of *Mah Kab Yew v. P.P.* in Singapore and *Adnan bin Khamis v. P.P.* in Malaysia. At page 46 the authors seem to be surprised that the High Court in Alor Star followed the reasoning in *Mah Kab Yew* and the case of *Public Prosecutor v. Mills*. The High Court was wrong in regarding *Mah Kab Yew* as a decision of the Court of Criminal Appeal of Singapore but it was correct in saying that it was bound by *Cheow Keok's case* and also by *Mill's case*. The High Court decided that the matter could only be resolved by the Federal Court but for the time being, it decided to follow *Mill's case*. This view was subsequently upheld by the Federal Court.

The authors seem to think that the question whether negligence in section 304A is the same as "civil negligence" is still debateable, though they do not refer to the tests suggested by Ong C.J. in *Adnan bin Khamis v. P.P.* nor to his view that section 304A of the Penal Code seems to have been rendered practically redundant by section 34A of the Road Traffic Ordinance, 1958.

The authors are enthusiastic about the decision of Lee Hun Hoe J. in the case of *Public Prosecutor v. Joseph Chia Saiko*, but unfortunately it has not been approved by the Federal Court. In *Abdul bin Pelaga v. Public*

*Prosecutor*, [1972] 2 M.L.J. 177 Lee Hun Hoe J. stated that the case of *Joseph Chia Saiko v. Public Prosecutor* was referred to the Federal Court. He said:—

"In *Public Prosecutor v. Joseph Chia Saiko*, I expressed the view that the test of a "reasonable and prudent driver would exercise in the circumstances as laid down in *Simpson v. Peat* [1952] 1 All. E.R. 449 and *Voo Yun Fatt v. Reg* (1957) S.C.R. 127 could be applied to section 304A bearing in mind the additional element required to be established. This view must now be regarded as wrong in the light of the answer given by the Federal Court to the second question."

The second question was whether evidence sufficient to sustain a charge under section 14(1) of the Road Traffic Ordinance would also be sufficient to warrant a conviction under section 304A of the Penal Code provided death was also shown to be the immediate and not the remote cause of the negligent act".

The Federal Court stated that its answer to the second question was in the negative but unfortunately they did not give any written judgment. The case of *Abdul bin Pelaga v. Public Prosecutor* was decided on December 19, 1972 but unfortunately it was not reported till the end of 1973 and therefore presumably the report was not available to the authors.

This review has unfortunately been critical but the criticisms have been made, so that the book can be improved and so that students and practitioners can use the book with confidence. Like the authors the reviewer has commented on the more important and controversial aspects for the purpose of provoking thought.

Ahmad Ibrahim.

### PIRACY, PARAMOUNTCY AND PROTECTORATES

By Alfred P. Rubin

[Kuala Lumpur: Penerbit Universiti Malaya, 1974; 155 pp.

Bound M\$15.00, paper M\$8.50]

As the author indicates in his Introduction this book focuses on the evolution during the nineteenth century of European formulations as the basis for political actions in, or re-organization of, the Malay Peninsula. To be more specific, the book tells the story of British attempts to justify, legally, their interference in, and domination of, the affairs of the northern Malay Sultanates.

The story begins with the British acquisition of Penang from Kedah in