

## BOOK REVIEW

### THE LAW OF CONTRACT IN MALAYSIA AND SINGAPORE: CASES AND COMMENTARY

by Visu Sinnadurai

[Kuala Lumpur: Oxford University Press, 1979. 764 pp]

The author, Visu Sinnadurai, is an Associate Professor, in the Faculty of Law, University of Malaya. Having taught at the University for number of years, the author has acquired a deep insight into the subject which he employs gainfully in presenting his comments on cases decided by courts in Malaysia, Singapore and elsewhere. The author is forthright in his exposition when he disagrees from the decision in a particular case. The book is divided into number of Chapters. Each Chapter is further sub-divided into three parts, introduction, cases, notes and comments which has considerably enhanced the value of the book as one is introduced to the subject in the first instance followed by cases decided by courts in Malaysia and Singapore though occasionally supplementing by referring to select Indian cases which is but natural as the Malaysian Contract Act, for the most part, is in *para materia* with Indian Contract Act, 1872. Perhaps the best part of the book is 'notes and comments' which the author handles very deftly. The bibliography at the end of each chapter adds to the value of the book which is a pioneering effort in this field. The style is lucid and readable throughout. The book is of immense benefit to students and practitioners alike.

The popularity of the book can be judged from the fact that the first edition was sold out in the very first year of its publication in 1979 and the second impression had to be printed in 1980.

On page 28, the author correctly states the Malaysian Law when he says "An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor . . . . This will, therefore, mean that the acceptor can revoke his acceptance before it comes to the knowledge of

the proposer. There is no English decision on this point but the case of *Dunmore v. Alexander* [1830] 9sh 190 is often cited to support the view . . . .” However, under English Law, acceptance is complete both against the offeror as well as the offeree the moment letter of acceptance is posted by the offeree (See Anson-Law of Contract 25th Ed. 1979, page 48, *Cheshire & Fifoot's Law of Contract* 9th Ed. 1976, page 47; *Household Fire & Accident Ins. Co. v. Grant* [1879]L.R. 4 Ex. D. 26). The case of *Dunmore v. Alexander* quoted by the author only involved a question of agency and simultaneous receipt of letter of acceptance and revocation. However, there is a feeling that principle of consensus should be adhered to and there should be no contract till acceptance is received. In *Holwell Securities v. Hughes* [1973]2 All. E.R. 476, an option to purchase land was exercisable by notice. It was held that the mere posting of notice which was never delivered was not a valid exercise of the option.

On page 35 under Note (i), the author refers to the case of *Lalman Shukla v. Gauri Datt* and goes on to say within parenthesis “Public advertisement offering a reward, the performance of the conditions of the offer was held to be acceptance under section 8 of the Contract Act”. The case did not hold that but the judge merely said by way of obiter: “in the case of a public advertisement offering a reward, the performance of act raises an inference of acceptance” (emphasis added).

On page 37, the author while discussing requirements of acceptance says that it ‘must be within reasonable time’ under this heading he has referred to the case of *Fraser v. Everett*. This case is not on acceptance but on performance within reasonable time. On page 48 under heading ‘Delay and Loss in Post’ in note (i) the author has referred to the case of *Bhagwandass v. Girdhari Lal & Co.*, which is not a case on delay and loss in post but on offer and acceptance on phone.

On page 78 under ‘note’, the author says “There may be certain cases where it is clear that the parties do not intend to enter into a legal relationship as yet: business negotiations ‘subject to contract’ clauses in agreements”. The author seems to have mixed up intention to create legal relationship in family arrangements with ordinary cases of negotiations through correspondence which may or may not be complete contracts.

On page 85, the author had devoted one small paragraph on 'Promissory Estoppel'. The doctrine is of growing importance and the author could have referred to few more cases on the subject. On page 86, the author says "It was doubtful formerly whether this rule (Privity of Contract) was applicable in Malaysia because of the wide import, of section 2(d)". The fact of the matter is that rule of privity of Contract has always been applicable in Malaysia both under Common Law as well as Statutory Law. On page 120, the author states, "Illustration (c) to section 64 recognises the rule that part payment of a debt by a third party discharges the debt, see *Kerpa Singh v. Bariam Singh* [1966] 1 M.L.J. 38. As pointed out by the Federal Court, it is a question of fact in each case whether section 64 with illustration (c) would apply". In view of the clear provisions in the Act (section 64) the statement is contentious. On page 137 under Note (i) the author says "The decision of the Privy Council in Kepong's case supports the view that the doctrine of privity of contract is distinct from the rule that consideration must move from the promises". The correct position has all along been to distinguish clearly between stranger to contract and stranger to consideration.

On page 146, the author is right when he says "Therefore the application of the Chartered Bank case without any reservation in the Malaysian case of *Malayan Thread Co. Sdn. Bhd. v. Oyama Shipping Line Ltd. & Another* can be questioned". This is supported by privy council decision in *Port Swettenham Authority v. T.W. Wu & Co. Sdn. Bhd.* [1978] 2 M.L.J. 137.

On page 196, the author has referred to the case of *Lily White v. Munuswami* A.I.R. 1966 Mad. 13. He had not referred to another case *Indian Airlines v. Madhuri Choudhry* A.I.R. 1965 Cal. 252 where the court came to a different conclusion. In any case the author ought to have referred in detail to Standard Form Contracts or Contracts of Adhesion which now threaten to overshadow freedom of contract.

On page 206, the author says "The Common Law does not recognise duress of goods". He probably meant duress against property which will include both movable (goods) and immovable property. On page 324 under note (ii), the author says "the decision of the Privy Council has some unfortunate conse-

quences: a minor unlike the position in common law, cannot enforce an agreement against an adult. In *Raj Rani, v. Prem Adib* A.I.R. 1949 Bom. 215, it was held that an infant could not obtain any damages for breach of contract for the period the infant had worked under a contract which was for infant's benefit." This seems to be rather a sweeping statement. In the above case, the plaintiff, a minor, was allotted the role of an actress which was subsequently allotted to another artist by the defendant. The agreement was made with her father. The defendant terminated the contract with her father. The court held that the promise of a minor girl to serve, being not enforceable against her, cannot furnish any consideration for the defendant's promise to pay her a salary. In *Raghava Chariar v. Srinivasa* [1917] 40 Mad. 308, the court held that a mortgage executed in favour of a minor who has advanced the whole of the mortgaged money is enforceable by him or any person on his behalf. In *General American Insurance Co. Ltd. v. Madanlal Samulal* [1953] 59 Bom. 656, the court rejected the plea of the insurance company that the person on whose behalf goods were insured was a minor and allowed the minor to recover the loss from the insurance company. A minor may also enforce a promissory note executed in his favour. There is nothing in the Contract Act to prevent a minor from being a promisee provided he has already given full consideration. Where contract is still executory or consideration is still to be supplied, the principle laid down in *Mohiri Bibee's* case may apply. (Also see author's comments under note (i) on page 351).

On page 403 under Note (iii), the author says "Champertous Agreements: It is not clear whether such agreements are considered illegal and void in Malaysia". In *Bhagat Dayal v. Debi Singh Sabu* (1908) 35 I.A. 48, their Lordships of the Privy Council clearly laid down that an agreement champertous — according to English Law was not necessarily void in India (same seems to be the position in Malaysia) it must be against public policy to render it void. In 1954 S.C. 554, the Supreme Court held that rigid rules of Champerty and Maintenance do not apply in India.

On page 489, para 2, the author states "It is arguable that since the consequences of frustration is now dealt with by the Civil Law Act, 1956, sections 57 and 66 of the Contract Act are



impliedly repealed in so far as they may be inconsistent with this subsequent legislation". The Civil Law Act, 1956 does nothing of the kind suggested by the author. Section 57 of the Contract Act refers to instances of impossibility of performance or frustration while section 66 refers to obligation of person who has received advantage under void agreement or contract that becomes void. Section 66 is of much wider import than section 15 and 16 of the Civil Law Act, 1956.

The author is to be congratulated for clearly defining the relationship between section 40, 65 and 66 of the Contract Act which was somewhat obscure (page 634 note vi).

The author has been able to clearly spell out the distinction between liquidated damages and penalty on the one hand and between earnest money and deposit on the other. The position is not yet clear about the true nature of deposit, as pointed out by Lord Hailsham in the *Linggi Plantation's case*. "A deposit might on investigation reveal that it was in fact purely colourable and . . . turn out to be . . . a penalty" (pages 698 - 700).

The author has very clearly and succinctly dealt with general principles of contract but has not discussed some other provisions of the Contract Act, 1950. He has but made a passing reference to the growing field of Quasi-contracts as contained in sections 69-73 of the Act. He has not at all referred to the provisions of Part IV of the Act sections 32-37 dealing with contingent contracts or Joint Liabilities Part V sections 41-46. Appropriation of Payments sections 60-62. The book is confined to first 76 sections of the Act ignoring contracts of Indemnity and Guarantee, sections 77-100, Contracts of Bailment, sections 101-134, Agency-sections 135-191 which may collectively be termed as special contracts which probably fall outside the general principles governing contracts as embodied in the first 76 sections of the Act.

Some distinctive features of the book deserve a special mention: namely, the elaborate frame work of the contents providing a panoramic view of the text; the comprehensive table of cases with full alternate citations and the table of statutes which should prove a boon to the busy practitioners and students. More than adequate subject index reinforces the strength of the book. Each excerpted case covering a point of

law is preceded by a clear statement of the principle for which it stands. The format of presentation is excellent.

The author deserves all praise and commendation for this outstanding work.

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