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Legal Scribes is an online publication that aims to include case notes, commentaries, legislative updates and succinct articles on contemporary issues relating to the law and legal community.

School of Law
Singapore University of Social Sciences
463 Clementi Road, Singapore 599494
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Editor's Foreword

1. This issue of Legal Scribes discusses a wide range of interesting legal developments in the spheres of both public and private law.

2. The tensions in Singapore's national security landscape, and the various legislative responses to these tensions, are explored in the article by Mr Ben Chester Cheong.

3. In the sphere of artificial intelligence tools, Mr Paul Cheong offers his views in relation to the impact of Chat GPT on a wide range of areas, including intellectual property, medical advice and personal data protection.

4. Turning to the realm of Contract Law, my article considers recent legal developments in relation to the issue of the award of damages based on the cost of cure measure. In particular, issues relating to the relevance of the intention to effect such a cure will be considered.

5. Finally, Mr Alex Woon offers his insight into how court appeals work and when a sentence can be increased.

6. We are grateful to our Dean, Professor Leslie Chew, SC, for his review of and comments on this edition of Legal Scribes.

7. We hope you enjoy reading this latest issue of Legal Scribes.

Assoc Prof Ji Lian Yap
Editor, Legal Scribes
Singapore University of Social Sciences

Tensions in Singapore national security landscape

Since the surprise attack by Hamas on Israel in October 2023, it has raised several national security challenges for Singapore from a criminal justice perspective. Singapore's national security strategies have continuously been adapted to allow Singapore to defend her national interests and sovereignty. Singapore's key national interests have been described as 'those that would allow her to overcome inherent vulnerabilities due to geographic and historical factors'.[1] At the annual Ministry of Home Affairs National Day Awards investiture on 27 November 2023, Law and Home Affairs Minister K Shanmugam highlighted the rise in anti-Singapore sentiments online following the Israel-Hamas hostilities.[2]

Deputy Prime Minister Lawrence Wong spoke during a debate in Parliament on 6 November 2023 on a motion about the situation in the Middle East. He noted that 'the police received eight reports of offensive remarks or actions targeted at members of the Jewish or Muslim communities' in Singapore in October 2023, which is almost the same as the number of related reports received in the 'preceding nine months of the year combined'. DPM Wong described it as a 'very sharp spike'. He also said that Singapore 'fully expects extremist and terrorist groups in the region to use the conflict to rile up sentiments and radicalise more people'. DPM Wong stressed that Singapore does not want to 'import foreign politics or choose sides', but instead 'chooses what is in its best interests'.[3]

[1] Alex Phua Thong Teck, 'What are the Past, Present and Future Challenges to Singapore's National Security?' (2020) 46(2) Pointer 11-24 <https://www.mindef.gov.sg/oms/safti/pointer/documents/pdf/v46n2_past_present_and_future_challenges-min.pdf>

[2] Matthew Mohan, 'Rise in anti-Singapore sentiment online since outbreak of Israel-Hamas hostilities: Shanmugam', ChannelNewsAsia (27 November 2023) <https://www.channelnewsasia.com/singapore/shanmugam-anti-singapore-sentiments-online-after-oct-7-hamas-israel-3948091>

[3] Ang Hwee Min, 'Increase in anti-Singapore rhetoric and online extremist threats since start of Israel-Hamas war: Lawrence Wong', ChannelNewsAsia (6 November 2023) <https://www.channelnewsasia.com/singapore/israel-hamas-parliament-increase-online-threats-extremist-lawrence-wong-3900326>

Singapore deals with national security concerns through a range of approaches, including diplomacy, deterrence through a highly capable armed forces, and a robust justice system. In this article, I will focus on one aspect, i.e., a robust justice system and strict laws to deal with national security issues.

In a paper I wrote for Singapore Policy Journal based at Harvard Kennedy School in 2022,[4] I explained how Singapore's famed economic success can be attributed to two factors, first, public confidence in the judiciary, and second, strict laws producing a deterrent effect. Yet, every positive outcome of a policy decision requires some form of trade-off. There is a trade-off involved for the peace and security that Singapore enjoys, a point emphasised by Minister Shanmugam when he spoke during a dialogue conducted by the Ministry of Home Affairs and National Youth Council on 21 September 2023 to about 80 young people aged between 15 and 35 on the rationale for Singapore's strict stance on drugs and the death penalty.[5]

Freedom of expression

In Singapore, while Article 14(1) of the Constitution of the Republic of Singapore guarantees Singapore citizens the right to freedom of speech and expression, there are restrictions on topics that involve national security, morality, and public order.[6]

Singaporeans generally enjoy the right to freedom of speech and expression. This is reflected in a 1977 parliamentary speech, then Prime Minister Lee Kuan Yew remarked that although Singaporeans are hard-working, industrious, rugged individual, they are also a 'champion grumbler'.[7] It is not difficult to see what Singaporeans complain about. A quick check on social media platforms would reveal many complains that Singaporeans have - some serious, some frivolous. People blame the woke culture for the nature of complains in Singapore. The woke

[4] Ben Chester Cheong, 'Judiciary and Law Enforcement in Singapore Inc.' Singapore Policy Journal (19 June 2022) <https://hksspr.org/judiciary-and-law-enforcement-in-singapore-inc/>
[5] Loraine Lee, 'Soft heart, hard head: Shanmugam says S'pore relies on hard facts and compassion over drugs, death penalty' TodayOnline (21 September 2023) <https://www.todayonline.com/singapore/drug-death-penalty-heart-mind-shanmugam-youths-2260146>
[6] See Article 14(2) of the Constitution of the Republic of Singapore.
[7] 'Speech by the Prime Minister, Mr Lee Kuan Yew, in Parliament on 23 February 1977' National Archives of Singapore <https://www.nas.gov.sg/archivesonline/data/pdfdoc/lky19770223.pdf>

phenomenon started gaining popularity in the 2010s.[8] But apart from it, the reason why people complain can be attributed to psychology. In an op-ed by American Professor Peter Coclanis in July 2021, he attributes the complaint culture in Singapore to its 'extremely competitive nature and relentless pace of change'. But he also recognises that some of these complains do serve 'serious and constructive purposes' without the need for 'organised protest and political violence' to effect policy changes.[9] Hence, constructive complaints in a peaceful manner that do not spread falsehoods can bring about policy changes in a progressive manner.

In fact, irresponsible comments that spread falsehoods can have serious repercussions. In an article by academics Gabriel Sanchez and Keesha Middlemass published in 2022, they concluded that democracy in the United States is in serious trouble. Citing sources, they observed that most of the American population believes that American democracy is 'in crisis and is at risk of failing'. One of the reasons for the 'decreased confidence in the political system' can be attributed to the acute rise of misinformation that is 'deliberately aimed at disrupting the democratic process'.[10]

Singapore deals with falsehoods through the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA). POFMA is aimed at preventing the spread of disinformation that could cause harm to society. I covered how these laws have been effective in ensuring Singapore has a high rate of vaccinations early on during the Covid-19 pandemic in a commentary for Nikkei Asia.[11]

Singapore deals with undesirable publications through the Undesirable Publications Act 1967 (UPA). The Infocomm Media Development Authority (IMDA) has banned the publication, 'Red

[8] Helen Lewis, 'How Capitalism Drives Cancel Culture' The Atlantic (14 July 2020) <https://www.theatlantic.com/international/archive/2020/07/cancel-culture-and-problem-woke-capitalism/614086/>
[9] Peter A Coclanis, 'Singaporeans, you think you've got problems? Think again' The Straits Times (31 July 2021) <https://www.straitstimes.com/opinion/singaporeans-you-think-youve-got-problems-think-again>
[10] Gabriel R Sanchez and Keesha Middlemass, 'Misinformation is eroding the public's confidence in democracy' Brookings Commentary (26 July 2022) <https://www.brookings.edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/>
[11] Ben Chester Cheong, 'Singapore has recognized the real danger of disinformation' Nikkei Asia (9 November 2023) <https://asia.nikkei.com/Opinion/Singapore-has-recognized-the-real-danger-of-disinformation>

Lines: Political Cartoons and the Struggle Against Censorship' under the UPA because the publication had contained offensive images that denigrated religions.[12]

As the Charlie Hebdo shooting in Paris had demonstrated,[13] if left unchecked, hate and destructive content with no socially redeeming value would undermine the hard-won peace and stability that underlie Singapore's progress and development. Bearing in mind that multiracial and multi-religious harmony is the bedrock of Singapore's progress and success, setting appropriate boundaries on the freedom of expression becomes clearly necessary.

Anti-interference laws

In 2021, the Foreign Interference Countermeasures Act 2021 (FICA) was passed which caused consternation that it was an attempt by the government to further curtail freedom of speech.[14] Yet its core purpose is on national security. Other countries with law aimed at preventing foreign interference include the UK and Australia.[15]

At the most basic level, national security threats are real even if they are not obvious, as the recent Hamas attacks that caught Israel by surprise has demonstrated. The story of the 'Trojan Horse' describes how Greek soldiers tricked the Trojans into bringing a wooden horse inside their city, which was hiding Greek soldiers who then attacked and destroyed Troy.[16]

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[12] Taufiq Zalizan, 'Ban of Red Lines book was not due to political content but religiously offensive images: Josephine Teo' Today Online (12 January 2022) <https://www.todayonline.com/singapore/ban-red-lines-book-was-not-due-political-content-religiously-offensive-images-josephine-teo-1788911>

[13] Adam Taylor, 'France has strict gun laws. Why didn't that save Charlie Hebdo victims?' The Washington Post (9 January 2015) <https://www.washingtonpost.com/news/worldviews/wp/2015/01/09/france-has-strict-gun-laws-why-didnt-that-save-charlie-hebdo-victims/>

[14] Rachel Pannett, 'Singapore passes 'most powerful' foreign interference law amid fears of ever-shrinking space for dissent' The Washington Post (5 October 2021) <https://www.washingtonpost.com/world/2021/10/05/singapore-fica-foreign-interference-law/>

[15] Mariah Thornton, 'National Security Bill: New counter-interference legislation shows UK has more to learn from Australia and Taiwan' LSE Blog (17 May 2022) <https://blogs.lse.ac.uk/cff/2022/05/17/national-security-bill-new-counter-interference-legislation-shows-uk-has-more-to-learn-from-australia-and-taiwan-2/>

[16] Matt Pickles, 'Did the Trojan Horse exist? Classicist tests Greek myths' Oxford News Blog (25 July 2014) <https://www.ox.ac.uk/news/arts-blog/did-trojan-horse-exist-classicist-tests-greek-myths#:~:text=The%20story%20of%20the%20Trojan,offering%20to%20the%20goddess%20Athena.>

FICA targets individuals who collaborate with a foreign proxy to, among other things, write negative articles on Singapore. Left unchecked, this becomes a national security issue, with outcomes quite similar to the Trojan Horse story described above.

Israel and Singapore have many similarities, one of which is being a relatively small state surrounded by larger neighbours, that may threaten continued existence.

To some extent, no other country in Southeast Asia more closely resembles Israel than Singapore, as acknowledged by founding Prime Minister Lee Kuan Yew in his memoir, Singapore Story.[17] The attack by Hamas on Israel is a stark reminder that peace and security cannot be taken for granted. It is important for Singapore to remain vigilant and take proactive measures to ensure that such attacks do not happen in our country.

This includes strengthening our intelligence capabilities, enhancing our border security, and working closely with our international partners to share information and best practices. I suggest there are four learning points from this incident.

Robust intelligence

Firstly, it is important to have a comprehensive intelligence strategy to counter radicalisation to violence as well as to prepare the population for any possible attacks. For example, the September 2011 attacks caught America by surprise.

Similarly, the attacks by Hamas could be seen as an intelligence failure in Israel, especially since Israel's intelligence agency, known as the Mossad, is considered by many to be one of the best in the world.[18] Several Israeli towns were taken over, even if only for a short period of time.

[17] Joe Freeman, 'The Singapore Story is the Israel Story' Tablet (25 March 2015) <https://www.tabletmag.com/sections/news/articles/the-singapore-story-is-the-israel-story>
[18] Emily Harding, 'How Could Israeli Intelligence Miss the Hamas Invasion Plans?' CSIS (11 October 2023) <https://www.csis.org/analysis/how-could-israeli-intelligence-miss-hamas-invasion-plans>

This was a complex attack made up of multiple hostage-taking incidents. It appeared that Hamas had employed significant deception. So significant was this deception that Israeli defence forces and intelligence agencies did not pick up an impending invasion of this scale.[19]

In this aspect, it is important for Singapore to continue to keep a lookout for any threats, whether physical or digital. Singapore has recognised that threats today come in different forms. Hence, it has established the fourth service of the Singapore Armed Forces, known as the Digital and Intelligence Service.[20]

Apart from governmental intervention, it is important for Singaporeans to take national defence seriously and to be psychologically prepared that years of relative peace should not be taken for granted that war will never happen.

Reporting suspicious behaviour

Secondly, it is important that Singaporeans are well-informed and united to guard against suspicious behaviour or foreign interference. Israel was attacked by a surprise, multi-pronged assault of rocket barrages and bands of gunmen who overran army bases and invaded border towns.

It was reported that many fighters entered through security breaches in security barriers separating Gaza and Israel. One Hamas soldier was filmed flying over in a powered parachute.[21] Among our community, if our social fabric is tightly knitted, Singaporeans will be better able to react against external threats and be guarded against foreign interference and malicious foreign actors who infiltrate our community.

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[19] Samia Nakhoul and Jonathan Saul, 'How Hamas duped Israel as it planned devastating attack' Reuters (10 October 2023) <https://www.reuters.com/world/middle-east/how-israel-was-duped-hamas-planned-devastating-assault-2023-10-08/>

[20] Aslam Shah and Darrelle Ng, 'https://www.channelnewsasia.com/singapore/saf-exercise-forging-sabre-idaho-army-airforce-dis-digital-intelligence-service-advanced-technology-3792471' ChannelNewsAsia (23 September 2023) <https://www.channelnewsasia.com/singapore/saf-exercise-forging-sabre-idaho-army-airforce-dis-digital-intelligence-service-advanced-technology-3792471>

[21] Rachel Hagan, 'Moment Hamas fighters seen paragliding across Israel border before deadly attack' Mirror UK (7 October 2023) <https://www.mirror.co.uk/news/world-news/moment-hamas-fighters-seen-paragliding-31129872>

In the same vein, race and religion continue to be Singapore's most visceral fault line and reducing racial and religious tension in a multi-ethnic and multi-religious country is crucial in preventing future acts of terrorist violence in Singapore.[22]

Campaign against false information

Thirdly, there is a need to safeguard against false information. Singapore may not face a physical war, but it is possible that there are digital wars that it must grapple with. For instance, as a well-capitalised nation and now with the highest GDP per capita in the world, Singapore could be vulnerable to malicious campaigns to destabilise its economy.[23]

The recent roundup of anti-money laundering activities in Singapore, involving over US$2 billion in assets seized reflects a proactive approach to stem criminal activities in Singapore.[24] If left unchecked, criminal activities could fester into a hotbed for terrorism activities to promulgate in the country.

International cooperation

Finally, it is important for us to maintain strong international cooperation with various partners and allies. Regional stability is also important. If there is greater economic cooperation among regional countries, the propensity for conflict is decreased. To this end, the European integration

[22] Thio Li-ann, 'Between Eden and Armageddon: Navigating Religion and Politics in Singapore' (2009) Singapore Journal of Legal Studies 365-405

[23] See for example, Danson Cheong, 'Parliament: Size of reserves cannot be disclosed as a matter of national security, says Heng Swee Keat' The Straits Times (7 April 2020) <https://www.straitstimes.com/politics/size-of-reserves-cannot-be-disclosed-as-a-matter-of-national-security-says-heng-swee-keat>

[24] Yantoultra Ngui, 'Singapore's central bank looking into banks' role in $1.8 bln money laundering case' Reuters (26 September 2023) <https://www.reuters.com/business/finance/singapores-central-bank-looking-into-banks-role-18-bln-money-laundering-case-2023-09-26/>

resulted from a recognition that European countries should never go to war with one another again.[25]

Singapore has always made it a point to promote peace and stability in the region. This includes supporting regional initiatives that promote peace and stability, such as the ASEAN Regional Forum (ARF) and the Shangri-La Dialogue.[26]

The recent conflict serves as a stark reminder that peace and security cannot be taken for granted. While it is an aspirational hope that there will be stability in the Middle East, Singapore must remain vigilant and take proactive measures to ensure that such attacks do not happen here.

Hostile information campaigns have the propensity to mislead Singaporeans on political issues or stir up dissent and disharmony by playing up controversial issues such as race and religion. Issues of national security, fake news, and sovereignty are important issues that Singapore need to jealously guard against. Being a small nation, Singapore is extremely vulnerable to interference, as *Konfrontasi* has demonstrated.[27]

Singaporeans can play an active role by ensuring that they are not swayed by populism and platitudes, or by individuals or organisations with a hidden agenda, all of which should have no place in society.

Ben Chester Cheong
Lecturer, School of Law, Singapore University of Social Sciences

[25] Mette Eilstrup-Sangiovanni and Daniel Verdier, 'European Integration as a Solution to War' (2005) 11(1) European Journal of International Relations 99-135
[26] Jürgen Haacke, 'The ASEAN Regional Forum: from dialogue to practical security cooperation?' (2009) 22(3) Cambridge Review of International Affairs 427-449
[27] Daniel Chua, 'Konfrontasi: Why It Still Matters to Singapore' RSIS Commentary (16 March 2015) <https://www.rsis.edu.sg/rsis-publication/idss/co15054-konfrontasi-why-it-still-matters-to-singapore/>

Artificial Intelligence Tools – a view

Artificial Intelligence tools such as ChatGPT have opened a perceived Pandora's Box. To illustrate, ChatGPT is essentially a language model Artificial Intelligence that will generate interactive dialogue. In the course of the conversation with the user, it can produce content, essays, dissertations and solve a myriad of issues. More importantly, it can learn to better itself – akin to a child that learns from his errors.

Traditionally held legal spheres such as intellectual property can be foreseeably challenged as ChatGPT could possibly infringe on the protected works. As such, a question arises as to whether the collective management organizations require a new licence for ChatGPT users or whether the permitted use of a copyrighted work will be expanded and include use by ChatGPT subscribers. As ChatGPT mimics human dialogue, it will also transcend boundaries of both the real and the artificial intelligence worlds to provide seemingly sound advice, palatable guidance and steering directions that may have severe legal implications. For example, it may provide counselling advice that is deemed unsuitable for the recipient user who may lapse further into depression. In addition, it may provide dietary nutrition guidance that could cause a portly user to suffer malnutrition.

Similarly, it may provide legal and medical advice that may be incompatible with the clients' circumstances and situation. Though it leads to the empowerment of any man on the Clapham omnibus, the pertinent query will be what recourse can such users take when the advice goes awry? Should the traditional paternalistic government model be used to police the usage since the generation of misinformation on governance would also undoubtedly increase and consequently endanger societal beliefs and values?

Another potent problem is the collection of data, sensitive or otherwise in the course of the usage. The profound set of interesting issues with consent, compliance and enforcement will test any robust Personal Data Protection laws. For example, how does Singapore ensure that ChatGPT provide the same level of personal data protection under the Personal Data Protection Act 2012 when one ChatGPT user may unwittingly be able to access another user's personal data through

the interface and usage. Consequently, that would lead to foreseeable consultations, discussions, advisory guidelines and limiting legislation.

More importantly, in the education arena. Putting aside the issues of ChatGPT generating work for students and the students passing it off as their own, the traditional education model itself could be annihilated and pushed to reinvent itself for the future.

Put it simply, one does not need to understand or study the intricacies of how a mobile phone is made for one to effectively use it. With the advent of generative artificial intelligence such as ChatGPT, some areas in education would, unfortunately, become obsolete and redundant. For example, if ChatGPT is able to churn out legitimate first drafts of analysis reports, essays, and dissertations, is there a need to deeply study analytical tools, essay discourse markers and statistics? One has not even ventured into the employment mine field of obliterating jobs.

In addition, a more sinister usage would be how criminals will clone such generative artificial intelligence and use them for phishing and/or to create malware. It is wilful optimism that criminals will practise ethics in their business dealings. As such, the vast potential for good is also the key to the proliferation of evil.

The above discourse are just snippets of issues that will be cropping up when ChatGPT or any other generative Artificial Intelligence becomes the productive norm. It is indeed a nascent revolution that will require quick and sound intervention to manage the situation before one falls into the rabbit hole. Unsurprisingly, the dappled light at the end of the tunnel will be the hope that humans eventually remain masters of technology. The world must collectively and eventually agree on the boundaries of humanity and develop a ‘kill’ switch. One must further ‘chat’ on that.

Paul Cheong Yuen
Senior Lecturer, School of Law, Singapore University of Social Sciences

Cost of cure as a Measure of Damages for Breach of Contract

Introduction

The recent Singapore High Court case of *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd*[28] ("JSD v Tri-Line") provides invaluable guidance as to the relevance of a party's intention to effect a cure, in circumstances where that party is claiming damages for breach of contract based on the cost of cure measure. This guidance is particularly useful, as "there has not been a definitely answer in the case authorities as to the relevance of a party's intention to carry out outstanding repairs (or more generally, to effect the cure) in a claim for such costs".[29]

Facts

The case of *JSD v Tri-Line* involved a dispute between the appellants (who were in the business of renting, repairing and servicing aircraft and air transport equipment) and the respondents (who were in the business of providing freight services). The appellants and respondents had entered into a contract pursuant to which the respondent was to deliver several vehicles from Australia to Singapore. The vehicles were delivered but they arrived damaged as they were not properly secured during the course of transportation. One of the issues was whether the appellants were entitled to damages in respect of outstanding repair costs.

Intention to effect a cure

The basic measure of damages is to put the plaintiff in the position it would have been in had the breach not taken place and the contract been properly performed. [30]

In cases such as this (involving breach of contract leading to damage to chattel), a common issue is whether damages should be calculated based on the cost of cure measure (ie the price of repairing the damaged goods) or based on the diminution of value measure (ie the damages being the difference in value between the damaged goods and the goods if they had not been damaged).

[28] *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd* [2022] SGHC 227
[29] JSD v Tri-Line, para. 28
[30] JSD v Tri-Line, para. 26

In the case of *Ruxley Electronics and Construction v Forsyth*[31] *("Ruxley v Forsyth")*, it was held that where the expenditure was out of all proportion to the benefit to be obtained, the appropriate measure of damages was not the cost of reinstatement but diminution of value, even if that would result in a nominal award.

Citing an article by Solene Rowan[32], Goh Yihan JC observed that there were two ways in which a party's intention to effect a cure was relevant. Either it was relevant as a *prerequisite* for claiming the cost or cure, or it was relevant as a *factor* in considering the reasonableness of choosing the damages based on the cost of cure measure (as opposed to the diminution of value measure).[33]

The learned Judicial Commissioner concluded that a party's intention to effect the cure "is a relevant factor as part of the objective reasonable test in *Ruxley* for claiming such costs."[34] This conclusion was reached on the basis of an analysis of precedent , principle and policy.

The Singapore decisions mentioning *Ruxley v Forsyth* were carefully surveyed. The conclusion reached was that the Singapore courts (including the Court of Appeal) had not yet established any definitive proposition of law relating to the relevance of a party's intention to effect a cure a claim for damages based on the cost of cure measure (including for outstanding repairs). Therefore, the learned Judicial Commissioner concluded that in the absence of binding local authority, he was free to decide the relevance of the intention to cure by recourse to overseas cases and first principles.[35]

This was followed by a comprehensive survey of overseas cases relating to this issue. Following this, the learned Judicial Commissioner reached the conclusion that the intention to cure was merely one factor in deciding whether damages should be awarded on a cost of cure basis, rather than a pre-requisite for damages based on the cost of cure measure. [36]

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[31] *Ruxley Electronics and Construction v Forsyth* [1996] AC 344
[32] Solene Rowan, "Cost of Cure Damages and the Relevance of the Injured Promisee's Intention to cure" (2017) 76(3) CLJ 616
[33] JSD v Tri-Line, para. 29
[34] JSD v Tri-Line, para. 37
[35] JSD v Tri-Line, para. 49
[36] JSD v Tri-Line, para. 70-71

This conclusion was further supported by arguments based on principle. The learned Judicial Commission first mentioned the point that courts "routinely state that they have no concern with the use to which a plaintiff puts as award of damages."[37] However, it was emphasized that this statement had to be understood in the context of a situation where the plaintiff has already incurred the loss.

In contrast, the learned Judicial Commissioner emphasized that "where the cost of cure has not yet been incurred, it is not yet a loss, and if it is never incurred, it will never be a loss, in which case the only loss suffered by the plaintiff is the ordinary measure of the difference in value plus consequential losses."[38] In such circumstances, the judge opined that the courts should be concerned with whether the plaintiff would use the damages to pay for the cost of cure that it says it will incur.[39]

In support of this view, the judgment of Megarry VC in *Tito v Waddell (No. 2)* [1977] Ch 106 was cited, in which was said: "If the plaintiff…has no intention of applying any damages towards carrying out the work contracted for, …[i]t would be a mere pretense to say that this cost was a loss and so should be recoverable as damages." This is in line with JC Goh's observation that at its core, contract law was based on common sense and reasonable conduct.[40]

Finally, policy reasons were raised in support of the conclusion that the intention to carry out the cure was a relevant factor in determining whether damages on a cost of cure basis should be awarded. After examining various relevant policy considerations, the judge concluded that "the well-established policy reason, which lies at the heart of contractual damages, that the plaintiff is compensated only to such an extent as his true loss, weighs heavier against any other policy founded on reasons of convenience of not examining the plaintiff's intention to effect the cure."[41]

[37] JSD v Tri-Line, para. 72
[38] JSD v Tri-Line, para. 73
[39] JSD v Tri-Line, para. 73
[40] JSD v Tri-Line, para. 75
[41] JSD v Tri-Line, para. 80

Summary

Having considered all the reasons based on precedent, principle and policy, the judge concluded that a party's intention to effect the cure is a weighty factor to be considered as part of the reasonableness test in *Ruxley v Forsyth* when considering a claim for damages based on cost of cure. The judge said that the failure to prove an intention to effect a cure would (in the absence of very special countervailing factors) result in the plaintiff's claim for cost of cure damages being dismissed.[42]

It was further explained that when deciding whether there was an intention to effect the cure, the amount of time that the plaintiff left the damage unremedied was relevant.[43] However, the judge opined that the grant of an undertaking by the plaintiff should not be given much weight in demonstrating an intention to cure.[44]

Other relevant (though non-exhaustive) factors which were relevant to consider as part of the objective reasonableness test in *Ruxley v Forsyth* included:

(a) The level of disproportionality between the cost of cure and the benefit accruing to the promisee. The court observed that if the cost of cure was disproportionate to the benefit attained, then ordinarily only damages based on diminution of value would be awarded.[45]
(b) The extent and seriousness of the damages and its consequences.
(c) The nature and purpose of the contract, and the extent to which the contractual objective had been substantially achieved.[46]

The court then provided some practical guidance for a plaintiff seeking to claim for the cost of cure that he has not incurred. The court stated that a plaintiff who wants to claim for cost of cure must first show that he intends to effect the cure.[47] If he fails to do this, then in the absence of very special countervailing factors, his claim for cost of cure is likely to be rejected. In addition,

[42] JSD v Tri-Line, para. 82.
[43] JSD v Tri-Line, para. 83
[44] JSD v Tri-Line, para. 84
[45] JSD v Tri-Line, para. 85
[46] JSD v Tri-Line, para. 85
[47] JSD v Tri-Line, para. 87

the court would consider whether the choice to claim cost of cure over the difference in value was reasonable.[48]

Conclusion

This case provides welcome clarity as to the relevant factors to be considered in determining whether damages will be awarded on a cost of cure basis, in circumstances where the cure has not yet been effected. The comprehensive reasoning based on precedent (considering both local and overseas cases), principle and policy provides a sound basis for the development of Singapore principles relating to this important area of contract law. Parties seeking to claim damages for breach of contract based on the cost of cure measure in Singapore courts now have a clear and structured framework within which they can make their claim, which is a legal development that is very much welcomed.

Yap Ji Lian
Associate Professor, School of Law, Singapore University of Social Sciences

[48] JSD v Tri-Line, para. 88

Explainer: How do court appeals work and when can a sentence be increased?[49]

Recently, the High Court more than doubled an offender's sentence from 3.5 years' imprisonment to eight years and five months.

De Beers Wong Tian Jun posed as an agent for "sugar daddies" and deceived several young women into having sex with him, on the pretence that it was necessary if he was to recommend them to his fictitious clients. He pleaded guilty, was sentenced, and then appealed against his sentence. On appeal, the Chief Justice Sundaresh Menon actually increased his punishment.

Some may wonder how this is possible. The answer is that an appeal is not a risk-free, second bite at the apple. The key question for the court is whether the sentence imposed is legally correct.

UNDERSTANDING THE CRIMINAL JUSTICE PROCESS

In order to understand this case, we have to look at it in context.
An appeal is usually the last step of a criminal proceeding.
The entire criminal justice process generally looks something like this:

- Beginning — Someone makes a police report and the police commence investigations.
- Charging — Once investigations have been completed, the public prosecutor, who is the Attorney-General, decides whether or what to charge the accused with based on the evidence gathered by the police. Being charged means the accused is formally accused of committing an offence.
- Plead guilty/Claim trial — The accused then needs to decide whether he is going to dispute the charge(s) or not.

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- If he pleads guilty, he admits to the charge without contest. A judge will then convict him.
- If he claims trial, the prosecution will have to prove his guilt beyond reasonable doubt before a judge.
- If the accused is found guilty after a trial, he will be convicted. If he is found not guilty, he will be acquitted.

- Sentencing — Once the offender has been convicted, he will then be sentenced. A punishment will be imposed on him in accordance with the law.
- The range of possible sentences for an offence is usually prescribed by an Act of Parliament. The exact sentence for a particular case is decided by a judge, after hearing arguments (called submissions) on the appropriate sentence from both the prosecution and the defence.
- Appeal — Only once the accused has been convicted or acquitted can there be an appeal. The appeal is to a higher court against the decision of a lower court. An appeal from the State Courts goes to the High Court. An appeal from the High Court goes to the Court of Appeal.

WHAT IS AN APPEAL?

In criminal proceedings, both the prosecution and the defence may appeal. The party that starts the appeal is called the appellant, and the other party is the respondent. A criminal appeal is not a rehearing of the case. It is a request to a higher court to review the lower court's decision.

The appellate court, the court hearing the appeal, does not go through the same procedure as the lower court. It is usually a more condensed proceeding in which the appellate court is just looking at whether the lower court's decision is legally defensible.The appellate court does not try to second guess the lower court and will only intervene where there is a serious need to do so.

An appeal against conviction means that the appellant is asking the appellate court to overturn the findings of the lower court and declare him not guilty. An appeal against acquittal is the reverse: The appellant is asking the court to overturn a finding of not guilty and convict the accused.

An appeal against sentence means that the appellant is asking the appellate court to alter the punishment imposed in some way, either to increase or decrease it, or to change the nature of the sentence (for example, from imprisonment to a fine).The court will only do so if the sentence is manifestly inadequate or manifestly excessive, or there were serious legal problems with how the original sentence was arrived at.

Where the accused pleaded guilty, as in Wong's case, he can appeal only against sentence.

WHAT CAN A COURT DO ON APPEAL?

The powers of the appellate court are set out in the Criminal Procedure Code (CPC). In an appeal against conviction/acquittal, the appellate court may either overturn the conviction/acquittal, or remit the case to the trial court for a retrial. In an appeal against sentence, the appellate court may maintain, reduce or enhance the sentence. It may also alter the nature of the sentence.

In deciding whether and how to exercise its powers, the court hears submissions from the appellant and the respondent.

In an appeal against sentence, as in Wong's case, both parties will usually have a position on what the legally correct sentence is. In some cases there may be a cross-appeal — the respondent may also ask the court to change the sentence in some way.

Even if there is no cross-appeal, the job of the court is to determine what the correct sentence is according to law.

Therefore, if the original sentence is too low, the appellate court can of its own volition increase the sentence even if the respondent has not asked for such an increase. This was what happened in Wong's case. This is not common but it does occasionally happen.

HOW DOES THE COURT KNOW WHAT THE CORRECT SENTENCE IS?

There are four main principles of sentencing law:

1. Retribution — to ensure that the offender is punished appropriately for what he has done.
2. Deterrence — to deter the offender and other potential offenders from committing future offences.
3. Protection — to protect the public from the offender, often by way of incapacitation.
4. Rehabilitation — to reform the offender into a law-abiding member of society.

The court tries to find an appropriate balance between these principles in coming to its decision. The court must also ensure that the sentence is proportionate to the seriousness of the offence. The court may look to previous similar cases, called precedents, for guidance. Sometimes, there are previous cases in which the courts have set out guidelines — these are known as sentencing benchmarks or frameworks. In some cases, there is a mandatory sentence that is prescribed by an Act of Parliament. For example, certain drug trafficking offences attract a mandatory death sentence.

The correct sentence is a matter of law. It is not influenced by public opinion or the judge's personal morality.

IS THERE ANY APPEAL AGAINST THE OUTCOME OF AN APPEAL?

Generally, the decision of a criminal appellate court is final. There has to be some finality in the legal process, cases cannot drag on forever. There are, however, some exceptions.

The President may grant clemency to an offender and have the punishment waived. Offenders sentenced to death often appeal to the President for clemency. However, this is no longer a judicial matter. The President only grants clemency on the advice of the Cabinet.

Another exception involves a Criminal Reference to the Court of Appeal. This occurs only where there is a question of law of public interest to be resolved. A question of law means that it is a technical legal issue not relating to the facts of a case.

Finally, in 2018, a new procedure for review of appellate decisions was introduced. This is only applicable where a "miscarriage of justice" has occurred — either that earlier decision is demonstrably wrong or that in coming to it the integrity of the judicial process was compromised. This procedure has been invoked a number of times since coming into force but it rarely succeeds — the courts have emphasised that the review procedure is not to be lightly invoked and the requirements are stringent.

Alexander Woon
Lecturer, School of Law, Singapore University of Social Sciences