IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 69

Magistrate's Appeal No 162 of 2015/01

Between

Peh Hai Yam

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] – [Statutory Offences] – [Betting Act]

TABLE OF CONTENTS

Peh Hai Yam
v
Public Prosecutor

[2017] SGHC 69

High Court — Magistrate's Appeal No 162 of 2015/01
See Kee Oon J
6 January 2017

5 April 2017 Judgment reserved.

See Kee Oon J:

Introduction

1 The appellant, Peh Hai Yam, was convicted after trial before a District Judge on nine counts under s 5(3)*(a)* of the Betting Act (Cap 21, 2011 Rev Ed) read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) for conspiring with various accomplices to provide Baccarat "insurance" to patrons of the casino at Resorts World Sentosa ("RWS Casino"). The rules of Baccarat and Baccarat with Insurance are summarised at [16] of the District Judge's Grounds of Decision which is reported as *Public Prosecutor v Peh Hai Yam* [2016] SGMC 30 ("GD"):

> Baccarat was one of the games offered at RWS Casino. Players who join the Baccarat tables play against the House (*ie*, the casino operator) by placing their bets on the designated betting areas on the table. According to the RWS, Baccarat with Insurance game rules ("the Rules") (exhibits P11 and

> P12), in certain situations after the first four cards have been dealt, players who have bet on either "Player" or "Banker" may, additionally, place an insurance bet by betting on "Player Insurance" or "Banker Insurance", provided that the payout from the insurance bet does not exceed the value of the original bet placed on "Player" or "Banker".

2 The District Judge sentenced the appellant to five months' imprisonment and a fine of $25,000 for each of the first eight charges, and to five months' imprisonment for the ninth charge. He ordered the imprisonment terms in respect of two charges to run consecutively, resulting in the total sentence of 10 months' imprisonment and $200,000 fine (in default eight months' imprisonment).[1]

3 The appellant is not appealing against the District Judge's factual findings or the sentence imposed, but only against his conviction. The appeal centres on a point of law. The appellant argues that the District Judge erred in finding that the term "bookmaker", as used in s 5(3)*(a)* of the Betting Act, applies to persons who provide Baccarat "insurance" to casino patrons. The respondent submits that the District Judge correctly interpreted the term "bookmaker" in accordance with both the plain and purposive reading of the relevant provisions of the Betting Act.

Background facts

4 The undisputed facts and findings of the District Judge are set out in [13] to [65] of the GD. As the appellant is not challenging the District Judge's factual findings, I will briefly set out only those background facts that are material to the present appeal.

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[1] GD at [109].

5 Sometime in 2010, the appellant and one Teo Chua Kuang (also known as "Meng Tee") agreed to jointly receive Baccarat "insurance" bets from casino patrons at the RWS Casino. They offered the same odds as the RWS Casino. The appellant and Meng Tee agreed to split the winnings and losses, with Meng Tee taking a 30% share and the appellant taking a larger 70% share, as he was providing the funds to back the bets. This enterprise of offering Baccarat "insurance" bets grew considerably to the extent that Meng Tee had to hire runners to help solicit and receive Baccarat "insurance" bets from casino patrons.

6 Sometime in September 2010, the appellant recruited one Yong Tian Choy ("Yong") to be his runner at the Maxims and Maxims Platinum Clubs at the RWS Casino. The appellant gave gaming chips to Yong and instructed him to approach casino patrons at the Baccarat tables and offer them the option of placing Baccarat "insurance" bets with the appellant instead of the casino.

7 In June 2011, the RWS Casino discovered that the appellant was entering into bets with other casino patrons and prohibited him from entering the Maxims and Maxims Platinum gaming areas. Thereafter, the appellant's wife, one Tan Saw Eng ("Tan") took over the running of the Baccarat "insurance" operation in the casino. Tan ensured that the runners had sufficient chips to handle Baccarat "insurance" bets and also provided daily updates of their winnings and losses to various persons, including the appellant. Yong continued to receive the "insurance" bets from casino patrons.

8 On 2 November 2011, the appellant and his accomplices were arrested by Police Officers from the Criminal Investigation Department's Casino Crime Investigation Branch.

The decision below

9 Before the District Judge, the respondent adduced evidence from a total of 15 witnesses, three of whom were involved in the conspiracy to offer Baccarat "insurance" bets to patrons of the RWS Casino. Three witnesses who were patrons of the RWS Casino testified that Yong had offered them "insurance" bets at the same odds as those offered by the RWS Casino, and that they had placed bets with Yong on multiple occasions.

10 The appellant denied receiving "insurance" bets from the Baccarat players at the RWS Casino, and claimed that he was only sharing bets with friends as they all liked to gamble together.[2] The appellant contended that s 5(3)*(a)* of the Betting Act did not apply to games of mixed skill and chance, and did not cover Baccarat or the giving of Baccarat "insurance".[3] The appellant also argued that the operation of the Baccarat "insurance" scheme did not operate like a "classic" bookmaking scheme and that it was not possible to tell whether Yong was acting as a bookmaker or a punter.[4]

11 The District Judge held that Yong, who had received Baccarat "insurance" bets from patrons at the RWS Casino, was a "bookmaker" within the meaning of s 2(1) of the Betting Act. Specifically, the District Judge found at [84] that a Baccarat "insurance" bet was considered a "bet" within the meaning of the definition of "bookmaker" under s 2(1) of the Betting Act:

> *A fortiori*, in the present case, notwithstanding that Baccarat may be a game of chance or of mixed chance and skill under the Common Gaming Houses Act (Cap 49, 1985 Rev Ed), I am of the view that an insurance bet, which is a bet on an event

2 GD at [88].

3 GD at [95].

4 GD at [98].

> or contingency relating to an outcome in the Baccarat game, is still a "bet" within the meaning of the definition of bookmaker in the Betting Act.

12 Thus, the District Judge was satisfied that the appellant and his accomplices, including Yong, had contravened s 5(3)*(a)* of the Betting Act which criminalises the act of being a bookmaker in any place.[5] With respect to the appellant specifically, the statements given by his accomplices to the police clearly implicated him as being part of the conspiracy to offer Baccarat "insurance" bets at the RWS Casino.[6] The District Judge also rejected the appellant's claim that the patrons who had placed Baccarat "insurance" bets with his accomplices were friends with whom he was sharing bets.[7] The District Judge thus convicted the appellant accordingly.

Arguments on appeal

13 As mentioned at [3], the appeal centres on the appellant's argument that the District Judge erred in finding that the term "bookmaker" in s 5(3)*(a)* of the Betting Act applies to persons who provide Baccarat "insurance" to casino patrons.[8] The appellant contends that the "bets or wagers" referred to in the definition of "bookmaker" in s 2(1) of the Betting Act are limited to bets or wagers in respect of horse-races or other sporting events, and do not cover bets on games of chance, such as Baccarat, that are played in casinos. The appellant submits that such an interpretation is in line with Parliament's intention in enacting the Betting Act which was *only* to regulate betting on horse-races and sporting events.[9]

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5 GD at [87].

6 GD at [87].

7 GD at [91]-[92].

8 Appellant's Submissions at para 14a.

14 The respondent's position is that the appellant's grounds of appeal are without merit and that on a plain and purposive reading, the act of providing Baccarat "insurance" falls squarely within the scope of the Betting Act. The respondent contends that the term "bets or wagers" should be interpreted in line with its plain, ordinary meaning and applies to "bets or wagers" on *any* event. Further, the respondent submits that there is no evidence that Parliament intended for the Betting Act to be read restrictively to cover only "bets and wagers" on horse-races and sporting events.

My decision

15 There is essentially only one legal question in this appeal, and it is whether a Baccarat "insurance" bet, which is a bet on an event or contingency relating to the outcome in a Baccarat game, is a "bet" within the meaning of the definition of "bookmaker" in s 2(1) of the Betting Act ("the definition issue"). The appellant has also raised other issues ("the appellant's other contentions") pertaining to the District Judge's findings of law which I will briefly address in the course of this judgment for completeness.

16 Having carefully considered the arguments, I am of the view that a Baccarat "insurance" bet is a "bet" within the meaning of the definition of "bookmaker" under s 2(1) of the Betting Act. I therefore affirm the District Judge's findings that the appellant's accomplices were "bookmakers" under the Betting Act, having received Baccarat "insurance" bets from patrons at the RWS Casino. My reasons are set out below.

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[9] Appellant Submissions at para 3.

The definition issue

17 Section 5(3)*(a)* of the Betting Act provides as follows:

> (3) Any person who —
>
> (a) acts as a *bookmaker* in *any place*;
>
> …
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $20,000 and not more than $200,000 and shall also be punished with imprisonment for a term not exceeding 5 years.
>
> [emphasis added]

18 The term "bookmaker" is defined in s 2(1) of the Betting Act as follows:

> …any person who, whether on his own account or as penciller, runner, employee or agent for any other person, *receives or negotiates bets or wagers* whether on a cash or on a credit basis and whether for money or money's worth, or who in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates those bets or wagers; but does not include a club, its officers or employees or any other person or organisation operating or conducting a totalisator or pari-mutuel or any other system or method of cash or credit betting authorised under section 22;
>
> [emphasis added].

19 As mentioned, the appellant argues that the term "bets" in s 2(1) of the Betting Act only refers to bets placed with a bookmaker on horse-races or sporting events and not on games such as Baccarat which are played in casinos and gaming houses. The appellant further argues that Parliament, in enacting the Betting Act, did not intend to criminalise all forms of gambling in Singapore, but instead wanted to protect Singaporeans from the ills of unlicensed betting on horse-races and sporting events, and to exercise control over such gambling activities.[10]

What is a "bet" under the Betting Act?

20 The term "bets or wagers" is not defined in s 2(1) of the Betting Act or in the Interpretation Act (Cap 1, 2002 Rev Ed). The appellant's submission purports to limit the scope of the natural and ordinary meaning of the term "bet".

21 Having regard to the provisions of the Betting Act as a whole, I conclude that the term "bet" should not be read restrictively to refer only to bets on horse-races or sporting events but should, except where otherwise expressly provided, include bets on *any contingency or event*, including the outcome of a Baccarat game. My reasons for concluding thus are founded on two main points of interpretation – first, relating to the ordinary meaning of a "bet" and second, relating to the definition of a "bookmaker", within the context of the Betting Act.

22 First, in their natural and ordinary meaning, "bets or wagers" can be placed on any future and uncertain event, regardless of the type of event. As a matter of logic and common sense, this must include a bet or wager on the result of a card game such as Baccarat. The *Oxford English Dictionary* (Oxford University Press, 2013) defines the word "bet" as follows:

> a. The backing of *an affirmation or forecast by offering to forfeit, in case of an adverse issue*, a sum of money or article of value, to one who by accepting, maintains the opposite, and backs his opinion by a corresponding stipulation; the staking of money or other value on the event of a doubtful issue; a wager; also, the sum of money or article staked…
>
> b. *An amount staked on the result of a card-game*;
>
> …

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[10] Record of Proceedings Vol 1 at p 60.

> [emphasis added]

23 The same dictionary defines the word "wager" as:

> 3. a. Something ([especially] a sum of money) laid down and hazarded on the *issue of an uncertain event*; a stake. Now rare exc. In phr. to lay, win, lose a wager.
>
> …
>
> 4. a. An agreement or contract under which each of the parties promises to give money or its equivalent to the other according to the issue of an *uncertain event*; a betting transaction…
>
> [emphasis added].

24 This meaning is consistent with the view set out by the courts in local cases interpreting the terms "bet" or "wager" under the Betting Act and its predecessor statutes. In *Goh Gek Seng v Public Prosecutor* [1996] 1 SLR(R) 952 at [12], Yong Pung How CJ quoted a passage from *Police v Thoms* [1966] NZLR 1008 at 1010, where Wilson J defined "bet" according to its natural and ordinary meaning. Citing this definition, Yong CJ held that the appellant had "betted on horse races":

> 12 In *Police v Thoms* [1966] NZLR 1008 at 1010, Wilson J observed:
>
> > In ordinary understanding a bet is made when one person stakes money or some other valuable thing against money or other valuable thing staked by another person upon the condition that the person whose prediction as to the result *of the future uncertain event* proves incorrect forfeits his stake to him whose prediction proves correct.

> 13 Despite the difficulties courts in various jurisdictions had in defining whether a contract is a wagering contract, for example, in *Carlill v The Carbolic Smoke Ball Company* [1892] 2 QB 484 and [*Police v*] *Thoms,* I have no doubts that the appellant betted on horse races…
>
> [emphasis added].

25 In *R v Lim Keng Chuan* [1933] SSLR 187, a decision of the Supreme Court of the Straits Settlements, the court was concerned with the meaning of the word "wagering" found in the definition of a "common-betting house" in s 2(1) of the Betting Ordinance No 133 (XVI of 1912) ("the Betting Ordinance 1912"). The court held that "wagering" bore the same meaning as that given to the term by Hawkins J in *Carlill v The Carbolic Smoke Ball Company* [1892] 2 QB 484 at 490:

> …according to my view, a wagering contract is one by which two persons professing *to hold opposite views touching the issue of a future uncertain event*, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither of the contracting parties having any other interest in that contract than the sum of money or stake he will so win or lose, there being no other real consideration for the making or such contract by either of the parties. It is essential to a wagering contract that each party may under it either win or lose, whether he will win or lose being dependent on the issue of the event, and, therefore, remaining uncertain until that issue is known. If either of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering contract [emphasis added].

26 Interpreting the term "bet" according to its natural and ordinary meaning also accords with the views of Lord Hewart CJ in *Bennett v Ewens* (1928) 2 KB 510, which was relied upon by the District Judge in reaching his conclusion that a bet on the outcome of a Baccarat game is still a "bet" within the meaning of the definition of a "bookmaker" in the Betting Act.[11] In *Bennett*

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[11] GD at [83]-[84].

v Ewens, the appellant had held a "whist drive" in his hall, which involved conducting several rounds of the card game whist. The appellant was charged with using a room for the purpose of money being received based on the happening of a certain event or contingency of and relating to a card game, an offence under s 1 of the Betting Act, 1853 (16 & 17 Vic, c 119) ("UK Betting Act 1853"), which provides as follows:

> No house, office, room or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room or other place opened, kept, or used for the purpose aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law.

27 The court below in that case held that there was no betting as the game of whist was not an "event or contingency of or relating to any horse race, or other race, fight, game, sport or exercise" within the meaning of the UK Betting Act 1853. On appeal, Lord Hewart CJ disagreed with this and explained that:

> …The justices came to the conclusion that *the game of whist was not an event or contingency within the meaning of the section. I agree that it was not;* but it was not the game itself which was said to be an event or contingency; the complaint was that a certain valuable thing was to be paid or given on the happening of a certain event or contingency relating to that game – in other words, victory or defeat. …It seems to me

> quite clear that the justices misdirected themselves and came to a wrong decision in point of law, that this appeal ought to be allowed, and that the case should go back to the justices with a direction to convict.
>
> [emphasis added]

28 Although the court found that the game of whist was not an event or contingency within the meaning of the section, it held that bets were being taken in relation to the game of whist being played. I agree with the respondent's submission that this involved "side bets" or "secondary betting" on the game itself and in that regard the factual context is on all fours with the present situation. As submitted by the respondent, there is no separate "game" involved as the bet takes place within a "secondary betting market" which hinges on the result of the Baccarat game played in the RWS Casino. The real focus in the present case is on the proper characterisation of a Baccarat "insurance" bet. In my view, it is plainly a bet on an event or contingency relating to an outcome in the Baccarat game. Hence, the District Judge had correctly characterised it as a "bet" within the meaning of the definition of a "bookmaker" in the Betting Act.

29 I also reject the appellant's attempt to distinguish *Bennett v Ewens* on the basis that the "bet" in that case related to a game of mixed skill and chance, *ie,* whist.[12] In my view, this misapprehends what the court held in *Bennett v Ewens*, which was that the question of what amounts to a "bet" does not depend on whether the underlying game is one of pure chance, or mixed chance and skill but is instead dependent on whether "a certain valuable thing was to be paid or given *on the happening of a certain event or contingency relating to that game* – in other words, victory or defeat" [emphasis added].

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12 Record of Proceedings Vol 1 at p 64.

30 In support of a narrow definition of "bet", the appellant cites the case of *Seay v Eastwood* [1976] 1 WLR 1117 ("*Seay v Eastwood*"), where the owner of a gaming machine was held not to be a "bookmaker" under Irish law. The appellant also cites the case of *Chua Seong Soi v Public Prosecutor* [2000] 3 SLR(R) 271, claiming that the offender in that case was not charged under the Betting Act (Cap 21, 1985 Rev Ed) but under the Common Gaming Houses Act (Cap 49, 1985 Rev Ed), even though he allegedly "received" bets while gaming with his friends.[13]

31 I agree with the respondent that these authorities do not assist the appellant. In brief, the decision in *Seay v Eastwood* was premised on settled law that gaming machines were "treated *in law* as a separate subject from betting", and that the person who plays on a gaming machine was not betting with the owner of the machine (*Seay v Eastwood* at 1122–1124). This is because the owner of the gaming machine does not stake anything (at 1122). In the present case, the appellant and his accomplices did put up stakes against the players who placed a Baccarat "insurance" bet with them.

32 In *Chua Seong Soi v Public Prosecutor*, the accused was an owner of certain premises who allowed his friends and himself to use those premises to play *pai kow*. *Pai kow* is a game where the players place stakes into the game and all participate in the playing of the game. In that regard, the respondent is correct in pointing out that there is no one "receiving" bets in the game of *pai kow*, and accordingly, on the facts of that case, the accused would not come within the definition of "bookmaker" under the Betting Act.

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[13] Record of Proceedings Vol 1 at p 58–59.

The definition of "bookmaker"

33 Turning to my second point, s 2(1) of the Betting Act does not expressly limit the definition of "bookmaker" to individuals who receive or negotiate any particular types of bets and wagers. The appellant has sought to rely on other provisions and definitions within the Betting Act which make express reference to horse-races and sporting events as a basis to support his interpretation of the term "bookmaker". The definitions in s 2(1) of the Betting Act that the appellant relies on are:

> "betting information centre" means any place kept or used for receiving or transmitting by telephone or other means any information relating to *any horse-race or other sporting event* for the purpose of betting or wagering in contravention of this Act;
>
> …
>
> "common betting-house" means –
>
> > (a) any place kept or used for betting or wagering on *any event or contingency of or relating to any horse-race or other sporting event* to which the public or any class of the public has or may have access;
> >
> > …
>
> [emphasis added]

34 To the same effect, the appellant further relies on ss 6 and 8(2) of the Betting Act[14] which provide that:

> 6. Any person who for the *purpose of betting or wagering* in contravention of this Act announces or publishes or causes to be announced or published in any manner *information relating to any horse-race or other sporting event* shall be guilty of an offence and shall be liable on conviction to a fine of not less than $5,000 and not more than $50,000 and shall also be punished with imprisonment for a term not exceeding 2 years.
>
> …

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[14] Appellant's Submissions at para 5.

> 8. - (1)…
>
> (2) Any person who settles or pays money or money's worth in respect of *bets or wagers relating to a horse-race or any other kind of race* shall also be presumed until the contrary is proved to be acting as a bookmaker.
>
> [emphasis added]

35 The provisions cited by the appellant do not assist him because these provisions expressly mention the terms "horse-race" or "sporting event". Apart from those provisions where these specific terms are expressly incorporated, the Betting Act contains no other reference to these terms. Any such reference is also conspicuously absent from s 5(3)(*a*), the provision in question. In my view, the absence of the words "horse-race" and "sporting event" in the definition of "bookmaker" in s 2(1) of the Betting Act indicates that Parliament did not intend to limit the applicability of *all* the provisions of the Betting Act to horse-races and sporting events, contrary to what the appellant submits. Had Parliament intended such a limitation, it would have expressly legislated for it, as it had done in the specific definitions and provisions cited by the appellant.

36 Furthermore, I note that the term "betting or wagering" is expressly qualified by references to "horse-races" or "sporting events" in provisions such as s 8(2), which mentions "*bets or wagers relating to a horse-race or any other kind of race*". This shows that the term, when used *without* further qualification, refers to a wide range of activities extending beyond just bets on "horse-races" or "sporting events". Drawing from the well-loved children's tale, an illustration might be the fabled race between the tortoise and the hare, which is neither a "horse-race" nor a "sporting event". We are all well aware of its outcome based on the story as recounted; but it was not always going to be a foregone conclusion. This element of uncertainty in the future outcome is

precisely why bets and wagers have taken place over such contingencies since time immemorial.

37 There are other potential and readily-identifiable situations in which a person may have acted as a "bookmaker" in contravention of s 5(3)(*a)* of the Betting Act by receiving bets or wagers not relating to "horse-races" or "sporting events".[15] For example, bookmakers may conceivably receive or negotiate bets placed on the outcomes of government elections, beauty pageants, talent contests (*eg*, music or dance competitions), or entertainment award ceremonies such as the Academy, Emmy or Grammy Awards. It is not far-fetched to imagine that there may even be bets or wagers on the weather or the outcomes of trial (or appellate) litigation. These are obviously not "horse-races" or "sporting events" nor are they games of mixed skill and chance, but to my mind there can be no question that bets or wagers received or negotiated in relation to these outcomes by bookmakers would fall foul of the Betting Act. These illustrations make it clear to me that it would not be appropriate to adopt the strained and narrow interpretation put forth by the appellant.

38 Finally, the appellant may not rely on the definition of "betting" under s 4(1) of the Remote Gambling Act 2014 (No 34 of 2014):

> "betting" means the staking of money or money's worth –
>
> > (a) on the outcome of a horse-race or sporting event (whether or not the horse-race or sporting event has already occurred or been completed);
> >
> > (b) on any other event, thing or matter specified or described by the Minister, by notification in the *Gazette*, to be betting for the purposes of this Act;

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[15] Record of Proceedings Vol 6 at p 317: as submitted by the trial DPPs in the Prosecution's Skeletal Submissions for Further Hearing on 13 August 2013

39 The term "betting" as defined in the Remote Gambling Act 2014 is limited to bets received in the context of horse-races, sporting events, and other events specified by the Minister, but such a definition of "betting" is not found in the Betting Act. The Remote Gambling Act was only passed by Parliament on 7 October 2014 and assented to by the President on 18 November 2014. In my judgment, had Parliament intended for the definition of "betting" in the Remote Gambling Act to apply as well to the Betting Act, it would have amended the Betting Act to reflect this. It would not have provided instead for a new s 2A in the Betting Act, which expressly provides that the provisions of the Betting Act do not apply to or in relation to any remote gambling within the meaning of the Remote Gambling Act 2014.

Legislative history of the Betting Act

40 I now turn to consider Parliament's intention in enacting the provisions of the Betting Act. An examination of the legislative history of the Betting Act in respect of the definition of "bookmaker" and the offence under s 5(3)*(a)* does not evince any intention on the part of Parliament to restrict its application narrowly to bets on horse-races and sporting events. In fact, the legislative history fortifies my view that Parliament had not intended such a restrictive and narrow approach.

41 Parliament's intention for the Betting Act (and its predecessor statutes) appears to be focused broadly on suppressing the proliferation of betting houses and betting in public places. The original predecessor statute to the Betting Act is the Betting Ordinance 1912 (supra [25]). The Betting Ordinance 1912 was passed in the Crown Colony of the Straits Settlements in 1912. In introducing the Bill in the Legislative Council of the Colony of the Straits Settlements, the Attorney-General Thomas de Multon Lee Braddell

("AG Braddell") expressed the Government's intention to tackle the "evils of betting" in the Colony by aligning the law in the Straits Settlements with the law of England. The provisions in the Betting Ordinance 1912 were largely adapted from the UK Betting Act 1853 (supra [26]) and the Street Betting Act 1906 (6 Edw 7, c 43) ("UK Street Betting Act 1906") which were in force in the United Kingdom at the time.

42 In his speech to the Legislative Council (see *Proceedings of the Legislative Council of the Straits Settlements*, Official Report (1912) at B 134-135), AG Braddell said:[16]

> Sir, this bill…has two purposes, namely, the suppression of betting houses and the suppression of betting in public places. Betting houses have always been, in English law, regarded as a nuisance. *They are repugnant to the common law of England and they have, moreover, been made the subject of suppression by statute in the United Kingdom by the* [UK Betting Act 1853]. *And so also with regard to betting in public places. That is made an offence by the* [UK Street Betting Act 1906]. *It will be seen therefore that one is not introducing anything new to legislation by this bill.*
>
> …
>
> Now, I need not descant upon the evils of betting. They are too well known to need anything from me to show that the evil is a very great one and is one which a paternal Government is bound to recognize and do its best to suppress. The time has come for legislation on the subject.
>
> …
>
> Then I come to Clause 10, which is taken from the [UK Street Betting Act 1906], slightly altered; and *the object of this section is to prevent betting in the streets or thoroughfares or any place to which the public have access, or in any place licensed as a public-house or hotel…*
>
> [emphasis added]

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[16] Record of Proceedings Vol 6 at p 651.

43 Section 10 of the Betting Ordinance 1912, which is the original predecessor to s 5(3)*(a)*, provided as follows:[17]

> **Betting in public place.**
>
> 10. – (1) Any person who frequents or loiters in any street, roadway, highway, lane, arcade, footway, square, court, alley, or passage, whether a thoroughfare or not or in any public park or garden, or any open and public space to which the public have access, or in any place licensed as a public-house or hotel, on behalf either of himself or of any other person for the purpose of *bookmaking or betting or wagering or settling bets* shall,
>
> (a) in the case of a first offence, be liable to a fine not exceeding one hundred dollars;
>
> (b) in the case of a second offence, be liable to a fine not exceeding two hundred dollars;
>
> (c) in the case of a third or subsequent offence, or in any case where it is proved that the person whilst committing the offence had any betting transaction with a person under the age of sixteen years, be liable to a fine not exceeding five hundred dollars or to imprisonment of either description for a term which may extend to six months without the option of a fine,
>
> and shall be in any case liable to forfeit all books, cards, papers, and other articles relating to betting which are found in his possession.
>
> ...
>
> [emphasis added]

44 I make two observations at this juncture. First, there are no definitions for the terms "bookmaking", "betting" and "wagering" within the Betting Ordinance 1912. Second, there is nothing in the wording of s 10(1) of the Betting Ordinance 1912 which restricts the "bookmaking or betting or wagering" to horse-races or sporting events.

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17 Record of Proceedings Vol 7 at pp 319–320.

45 The Betting Ordinance 1912 was subsequently amended in 1934 by the Betting (Amendment) Ordinance (No 15 of 1934) ("Betting Ordinance 1934"). The relevant changes included, *inter alia*, moving the offence in s 10 of the Betting Ordinance 1912 to s 5(3)*(b)* and the inclusion of a definition of "bookmaker" under s 2(1). The purpose of the amendments, as stated by the Attorney-General Mr Percy Alexander McElwaine, was to plug an existing gap in the law by extending the offence of bookmaking to club premises (see *Proceedings of the Legislative Council of the Straits Settlements, Official Report* (1934) at B14):[18]

> …The purpose of this Bill is to tackle the bookmaking problem which has been giving a great trouble in the Colony and which has been occasioning very considerable losses of revenue to the Colony. *The Bill deals primarily with the carrying on of bookmaking transactions on club premises.* Clubs themselves have been unable to protect themselves against the activities of the "bookie" because club premises are not, in the ordinary acceptance of the word, public places. Bookmaking in public places is forbidden… [emphasis added].

46 Section 5(3) of the Betting Ordinance 1934 was amended to read:[19]

> (3) Any person who –
>
> (a) acts as a bookmaker on the premises of any club, or
>
> (b) frequents or loiters in any street, roadway, highway, lane, arcade, footway, square, court, alley or passage, whether thoroughfare or not, or in any public park or garden or in any common betting house or in any place to which the public is suffered to have access, or in any place licensed for the sale of intoxicating liquors or in any hotel, for the purpose of bookmaking or betting or wagering or settling bets
>
> shall be guilty of an offence…

47 Section 2(1) of the Betting Ordinance 1934 defined a "bookmaker" as:[20]

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18 Record of Proceedings Vol 6 at p 667.

19 Record of Proceedings Vol 7 at p 334.

> "Bookmaker" means any person who, whether on his own account or as servant or agent for any other person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets, or who in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates bets.
>
> "Bookmaker" does not include a club its officers or servants operating or conducting a totalisator or *pari-mutuel* authorised under section 15.

This definition is identical to the definition of a "bookmaker" found in s 18(1) of the UK Finance Act, 1926 (16 & 17 Geo 5, c 22) ("UK Finance Act 1926").[21]

48 Betting Ordinance 1934 was repealed and replaced by the Betting Ordinance (No 30 of 1960) ("the Betting Ordinance 1960"). The definition of "bookmaker" in s 2(1) of the Betting Ordinance 1960 was amended as follows:[22]

> "bookmaker" means any person who, whether on his own account or as penciller, runner, servant, servant or agent for any other person, receives or negotiates bets or wagers whether on a cash or on credit basis and whether for money or money's worth, or who in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates such bets or wagers; but does not include a club, its officers or servants operating or conducting a totalisator or *pari-mutuel* or any other system or method of cash or credit betting authorized under section 22 of this Ordinance;

49 I note that the phrase "carries on, whether occasionally or regularly, the business of receiving or negotiating bets or wagers" in the earlier definition of "bookmaker" in the Betting Ordinance 1934 was replaced in the Betting Ordinance 1960 with "receives or negotiates bets or wagers", thereby

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20 Record of Proceedings Vol 7 at p 333.

21 Record of Proceedings Vol 7 at p 341.

22 Record of Proceedings Vol 6 at p 669.

removing the requirement to prove that the person was "carry[ing] on…[a] business".

50 At the same time, the scope of the offence of acting as a bookmaker under s 5(3)*(a)* of the Betting Ordinance 1960 was extended to cover "*any* place". Since then, no amendments have been made to the definition of "bookmaker" or to s 5(3)*(a)* in the successor statutes of the Betting Ordinance 1960.

51 In his speech during the Parliamentary Debates on the Betting Bill which later became the Betting Ordinance 1960, the then Minister for Labour and Law, Mr K M Byrne, emphasised that (see *Singapore Parliamentary Debates, Official Report* (12 May 1960) vol 1 at col 659):[23]

> The Bill has two main purposes, firstly to strengthen the law for *the suppression of common betting-houses, betting in public places and bookmaking*, and, secondly, *to enable off-course betting on racing to be conducted under certain conditions…*
>
> [emphasis added]

52 In moving the Betting Bill, the Minister did not suggest that the Betting Ordinance 1960 was meant to address any specific type of betting. Thus, contrary to the appellant's assertion, it may be concluded that the purpose of the Betting Ordinance 1960 was not limited to controlling or suppressing betting on horse-races or sports events, but was aimed at addressing the broader mischief relating to *all* forms of betting.

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[23] Record of Proceedings Vol 6 at p 681.

53 The Betting Ordinance 1960 was repealed and replaced by the Betting Act (Cap 95, 1970 Rev Ed) on 1 January 1970 ("Betting Act 1970"). As mentioned, no amendments were made to the definition of "bookmaker" and s 5(3)*(a)*.

54 The Betting Act 1970 was further amended in 1986 by the Betting (Amendment) Act 1986. In this respect, the appellant relies on excerpts from the Parliamentary Debates in 1986 relating to these amendments to support his case that the purpose of the Betting Act was to control the nuisance of illegal bookmakers occupying public spaces for their bookmaking activities and causing annoyance to the public.[24]

55 As correctly pointed out by the respondent, the appellant's argument only addresses Parliament's intentions behind the *amendments* in 1986 and not the Betting Act as a whole. As stated by Professor S Jayakumar, the Minister for Home Affairs at the time (see *Singapore Parliamentary Debates*, Official Report (10 January 1986) vol 46 at col 725):[25]

> …The amendments…seek to…*close the gaps in the laws*…I would like to stress that no new offences are created except for the offence of running a betting information centre and of obstructing police officers.
>
> [emphasis added]

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24 Record of Proceedings Vol 1 at p 60.

25 Respondent's Bundle of Authorities Tab F.

56 Earlier in his speech, the Minister identified the deficiencies in the Betting Act 1970, including the inability of the provisions to address the emerging problem of illegal miniature turf clubs and betting information centres. The Minister did not say that the purpose of the Betting Act *as a whole* was limited to controlling betting in horse-races or sports events.

57 Finally, the appellant argues that Parliament did not intend to conflate the two regulatory regimes namely, the Betting Act and the Common Gaming Houses Act. The appellant submits that the Betting Act only covers bets in respect of horse-races and sporting events while bets made in casinos come under the Common Gaming Houses Act.[26] In support of this position, the appellant cites the following passage from the Report of the Law Reform Committee on Online Gaming and Singapore (Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on Online Gaming and Singapore* (July 2010) ("the LRC report") at para 57):[27]

> The two pieces of legislation deal with different types of gambling. The [Common Gaming Houses Act] deals more with "games of mixed chance and skill for money or money's worth" which is reflective more of casino-style gambling while the [Betting Act] deals with "bets or wagering on any event or contingency of or relating to any horse race or other sporting event" which is reflective more of sports-type betting. This distinction is important because it differentiates the culpability of individuals who engage in online casino-type gambling as opposed to those who engage in online betting or wagering.

58 In my view, the excerpt from the LRC report, which is couched in broad and general terms, does not assist the appellant in his case. The statement made in the above quote that the Betting Act deals with "bets or

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26 Record of Proceedings Vol 1 at p 60.

27 Appellant's Bundle of Authorities Tab 2.

wagering on any event or contingency of or relating to any horse race or other sporting event" appears to be a direct quotation from the definition of a "common betting-house" under s 2(1) of the Betting Act. Possibly owing to inadvertence or oversight, the LRC report does not appear to have considered the definition of "bookmaker", which bears no reference to horse-races or sporting events, or the related offence of being a "bookmaker" under the Betting Act (see the LRC report at para 56 and the absence of mention of the offence of being a "bookmaker" under the Betting Act):[28]

> The [Betting Act] governs betting and wagering activities. Generally speaking, this Act makes it an *offence to operate or be involved in common betting house or betting information centre, and to publish information relating to any horse race or sporting event for the purpose of illegal betting*. Like the [Common Gaming Houses Act], customers of such place or activities are also caught under its criminal provisions. Also similar to the [Common Gaming Houses Act], the [Betting Act] permits exemptions, and the Tote Board and the Singapore Pools are exempted from it. [emphasis added].

59 On the issue of the overlap between the regulatory regimes, the appellant submits that there would be "absurd consequences if every person who receives bets is a bookmaker". Citing the example of a croupier in an illegal gaming house, the appellant argues that such an individual could be liable under both the Common Gaming Houses Act and the Betting Act.

60 I disagree with the appellant on this point. In my view, as was held in *Bennett v Ewens*, such a croupier would not be caught by the definition of a "bookmaker" as he is part of the operation of the game itself, and receives bets which are part and parcel of how the game is played. On the other hand, someone who offers to receive or negotiate bets relating to the result of the game being operated by the croupier, would be a "bookmaker". On the facts in

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[28] Appellant's Bundle of Authorities Tab 2.

the present case, the difficulty of an overlap between the two statutory regimes simply does not arise.

61 Although a penal provision should be construed strictly and in favour of the accused where it could reasonably be read in two or more different ways, this should only be done as *a last resort* where all other interpretive tools have failed to resolve the ambiguity in the provision (see the remarks of V K Rajah JA in *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [38] and [57]). On the whole, considering the legislative history of the Betting Act and its predecessor statutes, I am of the view that Parliament had intended for the Betting Act to have a wide ambit to combat *all forms of betting and bookmaking* in Singapore, not limited to bets on horse-races and sporting events. The deliberate omission of the terms "horse-race" and "sporting events" from the definition of "bookmaker" in s 2(1) of the Betting Act comports with this intention.

The appellant's other contentions

62 Having considered the parties' submissions, I am also of the view that the appellant's other contentions are unmeritorious. These contentions are not germane to my decision, which is fundamentally concerned with the proper interpretation of the term "bet" under the Betting Act. Hence, I shall only briefly state my observations.

Maintaining a "balanced book"

63 The appellant submits that the "traditional" bookmaker is "someone who takes bets on various possible outcomes of an event from multiple parties and engages in specific bookmaking activities … to ensure that for each event there is a net profit after paying off the winning bets", *ie*, someone who

maintains a "balanced book" (per Moses LJ in *R (William Hill) v Horserace Betting Levy Board* [2013] 1 WLR 3656 at [6]). On this basis, the appellant argues that a person who provides Baccarat "insurance" only plays one side of each hand and therefore is not a bookmaker as he is unable to build a "balanced book".[29]

64 There is no basis, either in law or on the evidence, for the appellant's argument. The definition of a "bookmaker" in s 2(1) of the Betting Act contains no requirement that a person must build a "balanced book" in order to be considered a "bookmaker". Further, the appellant's argument completely ignores the evidence as to how the Baccarat "insurance" scheme was operated by the appellant and his accomplices. The patrons at the RWS Casino were offered odds by the appellant and his accomplices that mirrored those offered by the RWS Casino in their "insurance" bets. These patrons would receive a pay-out from the appellant and his accomplices if they lost in their Baccarat game on the RWS Casino's Baccarat table. It is also undisputed that the appellant and his accomplices had entered into bets on the RWS Casino Baccarat table itself.[30] Taken together, this can be construed, to some degree, as efforts undertaken by the appellant and his accomplices to maintain a "balanced book".

65 On a separate but related note, the appellant suggested that the definition of "bookmaker" in s 2(1) of the Betting Act, which mentions "any person who … *receives or negotiates bets*", would extend only to bets on horse racing and other sporting events where the odds are negotiable.[31] Put

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29 Appellant's Submissions at paras 24–27.

30 GD at [17].

31 Appellant's Submissions at paras 4–5.

another way, the appellant suggests that the word "or" within the definition should in fact be read as "and" *ie*. conjunctively rather than disjunctively. I am unable to see any merit in this argument. While it may sometimes be necessary "to read "and" in place of the conjunction "or", and vice versa", in order to give effect to Parliament's intentions (see P St J Langan, *Maxwell on the Interpretation of Statutes* (N M Tripathi Private Ltd, 12th Ed, 1969) cited in *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [72]), this requires clear adequacy of context (see *Public Prosecutor v Low Kok Heng* at [71] citing *Lam Joon Shu v AG* [1993] 3 SLR(R) 156). In the present case, I find that there is no basis nor any requirement to read the word "or" in the conjunctive sense as the appellant contends. To the contrary, a disjunctive reading would be perfectly consistent with the plain and purposive interpretations of "bookmaker" and "bet" as adopted by the District Judge, which I fully endorse in this appeal.

Whether "side bets" in casinos are covered under the Betting Act

66 The appellant argues that Parliament had no intention to criminalise "side-betting" among patrons in casinos in Singapore, as there are neither any Parliamentary debates or statements relating to such "side-betting", nor any other extrinsic material evidencing such an intention. The appellant further argues that as the casinos are able to control, through their own rules, "side-betting" among their patrons, there is no necessity to criminalise such "side-betting" in casinos.

67 I have explained above (at [28]) that an "insurance bet" is a "side bet" and is correctly characterised as a "bet" within the meaning of the definition of a "bookmaker" in the Betting Act. As s 5(3)*(a)* of the Betting Act plainly states, bookmaking in *any* place is an offence. In my judgment, s 5(3)*(a)*

evinces Parliament's clear intention to suppress and criminalise bookmaking, regardless of the location. The absence of Parliamentary debates or statements specifically on "side-betting" does not undermine that.

Conclusion

68 For the reasons above, I find that there is clearly no merit in the appellant's submissions. I am satisfied that the District Judge was correct in finding the appellant guilty under s 5(3)(*a*) of the Betting Act on nine charges of engaging in a conspiracy to act as a bookmaker by providing Baccarat insurance to persons gambling at the RWS Casino. There is no appeal against the sentence. I therefore dismiss the appeal against conviction and affirm the District Judge's findings and conclusions.

See Kee Oon
Judge

Ong Ying Ping, Lim Seng Siew and Chew Zijie (Ong Ying Ping Esq) for the appellant;
Hon Yi (Attorney-General's Chambers) for the respondent.