IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 185

Magistrate's Appeal No 9320 of 2016/01

Between

Stansilas Fabian Kester

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] – [Sentencing] – [Benchmark sentences] – [Drunk driving causing hurt or injury]

[Criminal Procedure and Sentencing] – [Sentencing] – [Principles]

Stansilas Fabian Kester
v
Public Prosecutor

[2017] SGHC 185

High Court — Magistrate's Appeal No 9320 of 2016/01
Sundaresh Menon CJ
27 April 2017

28 July 2017 Judgment reserved.

Sundaresh Menon CJ:

1 This is an appeal against the sentence imposed on the appellant for the offence under s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the RTA"), of driving a motor vehicle, having consumed so much alcohol that the proportion of it in his breath exceeded the prescribed limit. The appellant accelerated toward a road traffic junction after seeing the traffic signal turn amber. However, by the time he reached the junction, several seconds had passed after the signal had turned red against him. Pedestrians had started to cross the road and motorists were moving off across the line of travel of the appellant's vehicle. The appellant's vehicle continued through the junction, brushed past a pedestrian and collided into a motorcyclist, who was flung off his motorcycle. Fortunately, neither victim suffered very serious injuries. The appellant pleaded guilty to a charge under s 67(1)(*b*) of the RTA and consented to a separate charge of dangerous driving under s 64(1) of the RTA being taken

into consideration for the purpose of sentencing. He was sentenced by the district judge to two weeks' imprisonment for the s 67(1)(*b*) offence and also disqualified from holding or obtaining a driving license for a period of three years from the date of his release from prison.

2 This appeal concerns the approach to be taken when sentencing a person who has caused damage or injury while committing the offence of drunk driving. In *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Edwin Suse*"), I set out a sentencing framework for this offence focusing on the relationship between the offender's alcohol level and the appropriate level of punishment to be imposed. The question that arises in this appeal is whether and how that framework should be modified where the drunk driving has resulted in physical harm to a person and/or property, having regard to the fact that those are the very consequences that the prohibition on drunk driving was intended to prevent. More specifically, it raises the following question: in light of the sentencing range provided under s 67(1)(*b*), is the custodial threshold crossed once a drunk driver causes injury and/or property damage?

3 The appellant is a regular serviceman in the Singapore Armed Forces ("the SAF") and presently holds the rank of Major. He argues in mitigation that the contributions to the public that he has made over the course of a 15-year career with the SAF should be factored into the sentencing analysis, and that the court ought also to consider that he has already had certain bonuses and increments withheld and will be discharged from the SAF if a custodial sentence is imposed on him. It is therefore necessary in this appeal also to determine whether these arguments are sound as a matter of principle.

The appellant and the charges

4 The appellant, Mr Stansilas Fabian Kester, is a 35-year-old male Singapore citizen. He faced two charges under the RTA. The appellant pleaded guilty before a district judge ("the District Judge") to the first charge, which concerned the offence of driving with a breath alcohol level exceeding the prescribed limit under s 67(1)(*b*) of the RTA. The charge reads as follows:

> You … are charged that you, on the 29th January 2016, at about 4.43 p.m, along the signalized cross junction of South Bridge Road by Upper Pickering Street, Singapore, when driving motor car, **SJX1035Z**, did have so much alcohol in your body that the proportion of it in your breath, to wit, not less than **43 microgrammes of alcohol in 100 millilitres of breath**, exceeded the prescribed limit of 35 microgrammes of alcohol in 100 millilitres of breath and you have thereby committed an offence punishable under Section 67(1)(b) of the Road Traffic Act, Chapter 276. [emphasis in bold in original]

5 The appellant consented to the second charge, for the offence of driving in a manner which is dangerous to the public under s 64(1) of the RTA, to be taken into consideration for the purpose of sentencing. That charge is as follows:

> You … are charged that you, on the 29th January 2016, at about 4.43 p.m, did drive motor car, **SJX1035Z** along the signalized cross junction of South Bridge Road by Upper Pickering Street, Singapore, in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which was actually at the time, or which might reasonably be expected to be, on the road, to wit, by failing to conform to the traffic red light signal whilst driving straight across the junction of South Bridge Road by Upper Pickering Street and thus resulting in a collision with a female pedestrian, Norhayati Bte Omar, who was crossing the road on signalized green man and you continued forward into the junction and collided onto motorcycle FBK6019B, who was proceeding straight along Upper Pickering Street on signalized green light and you have therefore committed an offence punishable under

> Section 64 (1) Road Traffic Act, Chapter 276. [emphasis in bold in original]

6 The District Judge sentenced the appellant to two weeks' imprisonment and ordered that the appellant also be disqualified from holding or obtaining a driving license for a period of three years from the date of his release from prison. The District Judge's reasons are set out in his grounds of decision, *Public Prosecutor v Stansilas Fabian Kester* [2016] SGDC 361 ("the GD"). I begin by setting out the facts in brief.

The facts

7 In the afternoon of 29 January 2016, the appellant consumed three mugs of beer at a lunch gathering at the Clarke Quay Central shopping mall. The appellant explained that he had driven to the venue, not expecting to consume any alcoholic drinks. After the event, he contemplated taking public transport home because he had consumed some alcohol, but finally decided to drive home as he felt sufficiently sober and believed the drive home would only take about six minutes.

8 At about 4.43 pm, the appellant was driving along South Bridge Road toward the signalised cross junction of South Bridge Road and Upper Pickering Street. As he was heading towards the junction, he noticed that the traffic light controlling his line of travel had turned amber. As will become apparent, he must have been at some considerable distance from the junction at this time. Presumably because his judgment was impaired, instead of slowing down with a view to stopping, he accelerated, hoping to get through the junction. By the time he reached the junction, the traffic signal had turned red. The evidence suggests that the traffic light controlling the traffic going perpendicular to and across the appellant's line of travel had turned green about four seconds before

the appellant entered the junction. The signal controlling his line of travel must therefore have turned red some time before that. The appellant did not stop. As he entered the junction, his car brushed against a female pedestrian, V1, who was crossing the road with the signalised green man in her favour.

9 The appellant's car continued into the road junction. A motorcyclist, V2, had also entered the junction with the signalised green light in his favour and was proceeding along Upper Pickering Street in a direction perpendicular to the appellant's line of travel. The appellant's car collided into the left side of V2's motorcycle. The force of the impact flung V2 off the motorcycle, and he rolled across the bonnet and windscreen of the appellant's car before he hit the road. V2 momentarily lost consciousness upon hitting the road.

10 A breathalyser test was administered when the Police arrived and the appellant failed the test. He was then arrested on suspicion of having driven whilst under the influence of alcohol and escorted to the Traffic Police headquarters, where a Breath Evidential Analyser ("BEA") test was conducted on him. The test showed the appellant to have 43µg of alcohol in every 100ml of breath. This was about 1.23 times above the prescribed limit of 35µg per 100ml of breath, as set out in s 72(1) of the RTA. The victims were conveyed to Singapore General Hospital. V1 was found to have suffered a crush injury of the right foot, with swelling over the right foot and tenderness over the entire right mid foot and toes and a small abrasion over the corner of her right big toenail. She was given eight days of medical leave. V2 experienced retrograde and anterograde amnesia. He was observed in a ward for three days before he was discharged. Upon subsequent examination, he was found to have no neurological deficits and given 14 days' hospitalisation leave. The collision also resulted in scratches all over V2's motorcycle as well as twisted right and left

wing mirrors. The front bonnet of the appellant's car was dented, the front windscreen was cracked as were both front headlights, and the front bumper was scratched.

The District Judge's decision

11 The Prosecution sought a custodial sentence of two weeks' imprisonment, while the appellant (acting through his counsel, Mr K Muralidharan Pillai) submitted that the custodial threshold had not been crossed and that a fine should be imposed instead.

12 The District Judge referred to the observation in *Sentencing Practice in the Subordinate Courts* (LexisNexis, 3rd Ed, 2013) at p1721 that "[g]enerally, a fine is the norm for a first offender unless there are aggravating circumstances [such as] high levels of impairment of driving or intoxication as well as involvement in an accident resulting in personal injuries". He then cited the decisions in *Public Prosecutor v Lee Meng Soon* [2007] 4 SLR(R) 240 ("*Lee Meng Soon*") and *Edwin Suse*, and identified from the latter case two points of principle. First, where injury or property damage has been caused, a longer period of disqualification should generally be imposed, in conjunction with a higher fine or, where appropriate, a custodial sentence (citing *Edwin Suse* at [31]). Second, the offence of drunk driving may be aggravated by reason of the actual or potential danger posed by the offender's conduct, and such danger may be posed by the manner of the offender's driving (citing *Edwin Suse* at [27]).

13 The District Judge found that the appellant's driving ability was impaired, noting the following facts in particular (GD at [28]–[31]):

(a) The appellant accelerated instead of slowing down when the traffic light turned amber.

(b) He continued to drive into the junction even though the traffic light had turned red against him when he reached the junction.

(c) He was involved in two accidents involving two different victims.

(d) His car collided into V2's motorcycle with significant force, causing V2 to be flung off his motorcycle.

(e) The collision between the appellant's car and V2's motorcycle occurred about four seconds after the traffic lights had turned green in favour of V2. The traffic light on South Bridge Road (along which the appellant had been travelling) had turned red even earlier.

14 The District Judge did not accept as mitigating the appellant's argument that he intended to travel only a limited distance to get home: GD at [32]–[34]. He noted that the appellant's drive took him through the heart of the Central Business District on a business day at a time when traffic was heavy. This heightened the danger posed to road users. The District Judge observed that conduct resulting in a heightening of danger to road users is a relevant aggravating factor, citing *Edwin Suse* at [28]. Nor did the District Judge accept the appellant's suggestion that the appellant's relatively low breath alcohol content ("BAC") level provided grounds for a lighter sentence. His relatively low BAC level was not properly to be regarded as a *mitigating* factor, although a high BAC level could be considered an *aggravating* factor. Parliament had prescribed a limit of 35μg of alcohol per 100ml of breath, and this limit had been exceeded by the appellant: GD at [36]. Neither was the fact that the two

victims suffered relatively minor injuries a mitigating factor. In the District Judge's view, it was fortuitous that they did not suffer more serious injuries, particularly in light of the fact that the appellant had not taken any evasive action to avoid collision with the victims: GD at [37].

15 The District Judge then considered the appellant's argument that a sentence of imprisonment would have a detrimental effect on the appellant's career. The appellant had submitted that a custodial sentence would put an end to his career in the SAF as he would be discharged from the SAF upon being sentenced to a term of imprisonment for a criminal offence. This would essentially put to nought the 15 years he had spent in the SAF, during which he had an excellent record of service and had placed himself in a position to take on higher appointments, having recently graduated from the Goh Keng Swee Command & Staff Course which trained officers for leadership appointments. The appellant further submitted that the court should take into account, as mitigating factors, that his military track record reflected his "good character" and demonstrated his "exemplary service in the SAF". He cited several cases in support of the argument that good character and the provision of such services to the nation provide grounds for a reduced sentence.

16 The District Judge dealt with this argument shortly, explaining at [39] that the detriment to the appellant's career was regrettable but was a natural consequence of the appellant's own actions. He held that due credit would be accorded to the appellant for his contributions to the SAF as a regular serviceman and an officer, but such credit was in the circumstances negated by the appellant's failure of judgment and discipline that was expected of him.

17 Regarding the appropriate length of the imprisonment term, the District Judge referred at [41] to three sentencing precedents tendered by the Prosecution, but found that none of these were "on all fours with this case". He noted, nevertheless, that the accused persons in those cases had been sentenced to two weeks' imprisonment and between two and four years' disqualification from driving. The District Judge concluded at [44] that a sentence of two weeks' imprisonment "adequately reflect[ed] the seriousness of the offence without being particularly crushing on the [appellant]". He also imposed a period of disqualification from driving of three years, pursuant to s 67(2) of the RTA.

The appeal

18 The appellant appeals against the sentence imposed by the District Judge. He argues that the custodial threshold has not been crossed and the sentence of imprisonment should be substituted with a fine in the appropriate amount.

19 First, the appellant submits that a fine, rather than a custodial sentence, will suffice to satisfy the sentencing objective of deterrence. He observes that *Edwin Suse* does not stand for the proposition that a custodial sentence *must* be imposed in every case where injury or property damage has been caused; all that was said in *Edwin Suse* (at [31]) is that a custodial sentence may be imposed "where appropriate" in order to reflect the aggravation of the offence if injury or property damage has resulted. Therefore the court may impose a higher fine or a lengthier period of disqualification from driving to reflect these aggravating factors. The appellant also refers to several cases in which a fine had been imposed even though those cases involved more aggravated instances of drunk driving than the appellant's.

20 The appellant then argues that the facts of the case do not furnish proper grounds for the imposition of a custodial term. He points out that his BAC level was "only 8 micrograms of alcohol per 100 millilitres of breath higher than the prescribed limit". Referring to the table found at [22] of *Edwin Suse* where I set out the appropriate range of sentences for first-time offenders, categorised within bands according to their BAC level, the appellant argues that since he was found to have only 43μg of alcohol per 100ml of breath, he would fall within the "less severe half" of the first band, which covered offenders with 35–54μg of alcohol per 100ml of breath. He suggests that leaving aside any aggravating or mitigating factors, he would ordinarily have expected to be sentenced to a fine of less than $1,500 and a disqualification period of less than 15 months. The District Judge therefore "failed to accord sufficient weight to the fact that the Appellant's [BAC level] was low". The appellant also argues that it is "incongruous" for an imprisonment term of two weeks to be imposed on him given that both the victims suffered only minor injuries and made uneventful recoveries.

21 In addition, the appellant claims that he has made restitution to the victims in the sum of $15,771.93 and $26,062.64 to V1 and V2 respectively, but this, apparently, was not taken into account by the District Judge. Those sums were paid following the commencement of actions by the victims against the appellant in the State Courts. The parties then entered into consent orders for the appellant to pay those amounts to the victims. The appellant argues that the District Judge failed to consider this as a mitigating factor because there was no mention of restitution in the GD.

22 The final part of the appellant's submissions concerns his career in the SAF. Three distinct strands of argument can be distilled from his submissions.

The first pertains to the contributions that he has made to the SAF; the second, to the other penalties that the SAF has already imposed on the appellant; and the third, to the fact that a custodial sentence will essentially lead to the termination of his career with the SAF. In my judgment, these three strands of argument are conceptually somewhat distinct and therefore ought to be considered as such for clarity of analysis.

23 Beginning with the first aspect of his argument, the appellant argues that the courts have "regularly accorded other accused persons merit for their contributions and public service", which carry "weighty mitigating value in favour of the accused". This was one of the major points of emphasis in the appellant's written submissions, in which he cited a number of cases in support of his argument, including *Knight Glenn Jeyasingam v Public Prosecutor* [1992] 1 SLR(R) 523 ("*Knight Glenn Jeyasingam*"). According to the appellant, the District Judge "erred in principle by failing to accord any or sufficient weight to the Appellant's exemplary record of service to Singapore".

24 The second aspect of the appellant's argument is that a custodial sentence would be "crushing" as he will end up also facing SAF disciplinary proceedings and has already felt the consequences of his actions. According to the appellant, his performance bonuses and merit increments have been withheld, and he will suffer a likely bar from promotion for a duration. These are "already harsh penalties for an aspiring officer". He argues that the courts have regarded the existence of disciplinary proceedings as a factor warranting consideration in determining the appropriate sentence. A high fine coupled with a lengthy disqualification period would therefore be a "sufficiently proportionate" sentence.

25 The third and final aspect of this argument concerns the effect that a custodial sentence will have on the appellant's career. The appellant claims that under the SAF manpower directives, a custodial sentence would bring an end to his career in the SAF because a serviceman will be discharged from the SAF upon being sentenced to a term of imprisonment for a criminal offence. Hence, the imposition of a sentence of imprisonment would compound the adverse consequences that would befall the appellant. The Prosecution has not sought to dispute this factual claim either in its written or oral submissions. The appellant submits that the District Judge "erred in principle by disregarding the detrimental effect that a sentence of imprisonment [would have] on the Appellant's career", and this was said to be at odds with the case law.

The key issues for determination

26 The central issue in this appeal is whether the custodial threshold is crossed when and because the offender's drunk driving results in injury to another person and/or his property.

27 This must be considered in light of the legislative objective behind the enactment of the s 67(1)(*b*) offence. It is also necessary to have regard to the sentencing framework for the offence that was laid down in *Edwin Suse*, as well as recent cases of drunk driving where injury was caused. The aim is to arrive at an approach to sentencing that takes into account the seriousness of the offence and attributes the necessary gravity to the fact that injury has been caused to another in the commission of the offence, but that nonetheless remains sensitive to the other circumstances of the offence as well as any relevant aggravating and mitigating factors.

28 The other primary issue in the appeal is whether the appellant is correct, as a matter of principle, to argue that the contributions he has made in his 15 years of service to the SAF may properly be regarded as a mitigating factor that serves to reduce his sentence. The appellant's arguments also raise the question of whether it is proper for a sentencing court to take into account the fact that certain sanctions or consequences have been or will be visited on the appellant by his employer. I will address each of these broad issues before applying the relevant principles to the facts before me.

Sentencing a drunk driver who causes injury to another

29 Section 67 of the RTA reads as follows:

> **Driving while under influence of drink or drugs**
>
> 67.—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —
>
> (*a*) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle; or
>
> (*b*) has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit,
>
> shall be guilty of an offence and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and, in the case of a second or subsequent conviction, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months.
>
> (2) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving licence for a period of not less than 12 months from the date of his conviction or, where he is sentenced to imprisonment, from the date of his release from prison.

> (3) Any police officer may arrest without warrant any person committing an offence under this section.

Legislative intent behind the s 67(1)(b) offence

30 The offence under s 67(1)(*b*) of the RTA was enacted on 10 May 1996, following the passing of the Road Traffic (Amendment) Act 1996 (No. 11 of 1996) ("the Amendment Act"). The Amendment Act effected two changes which are relevant for present purposes. First, it repealed s 70 of the Road Traffic Act (Cap 276, 1994 Rev Ed) ("the RTA 1994"). Second, it re-enacted s 67 of the RTA in the form reproduced above.

31 Section 67(1) of the RTA 1994 provided:

> 67.—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is under the influence of drink or of a drug *to such an extent as to be incapable of having proper control of such vehicle* shall be guilty of an offence and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and, in the case of a second or subsequent conviction, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months.
>
> [emphasis added]

Section 67(1) was to be read in conjunction with s 70, which stated as follows:

> 70. Any person who has been arrested under section 67 … shall be *presumed to be incapable of having proper control of a motor vehicle* if the specimen of blood provided by him under section 69 is certified by a medical practitioner to have a blood alcohol concentration in excess of 80 milligrammes of alcohol in 100 millilitres of blood.
>
> [emphasis added]

32 The net effect of these two provisions in the RTA 1994 was that a person might be *presumed* (under s 70) to be incapable of having proper control of a

motor vehicle if his blood alcohol concentration exceeded the prescribed limit, and his presumed incapability of having proper control might then serve as the basis for finding him liable for the offence of driving while under the influence of drink to such an extent as to be incapable of having proper control of a motor vehicle (under s 67(1)). The focus of the offence was on the inability to control the vehicle rather than just on the quantity of alcohol present in the offender's blood.

33 On 27 February 1996, then-Minister for Home Affairs Mr Wong Kan Seng ("the Minister") explained that the Government intended to introduce important reforms to the RTA 1994. These reforms included the introduction of the BEA test to assess breath alcohol level at the point when the motorist is stopped. More relevant for present purposes, the intended reforms also included the repealing and re-enactment of ss 67 and 70 of the RTA 1994. The Minister provided the following explanation for the amendments to ss 67 and 70 (*Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at cols 723–724):

> Apart from the measures I mentioned above, we are also introducing other amendments. These are meant to tighten the various provisions of the Road Traffic Act. These are:
>
> (a) Presumption of incapability for drink-drivers
>
> Currently, under existing section 70 of the Act, a person is presumed to be incapable of having proper control of his vehicle if the amount of alcohol found in his blood is above the prescribed legal limit. *This has given rise to a situation where the defence tries to rebut this presumption by trying to prove in each case that the defendant did not lose control of the vehicle.*
>
> *To prevent unnecessary debate*, clause 9 of the Bill seeks to re-enact section 67(1)(b) to make the presence of alcohol exceeding the legal limit in a driver's blood or breath *an offence in itself without linking it to the control of vehicle*. The new section 67(1)(b) makes it clear that *an offence is committed once the*

> *driver's alcohol content exceeds the prescribed limit*. This provision is similar to the provisions in Malaysian and UK legislation.
>
> …
>
> [emphasis in original removed; emphasis added in italics]

34 Put shortly, the new s 67(1)(*b*) of the RTA was brought into law in order to end debate about *whether* an accused person was really incapable of having proper control of his vehicle despite his blood or breath alcohol content level exceeding the prescribed limit. Henceforth, Parliament intended that persons with a blood or breath alcohol content level exceeding the prescribed limit would, by virtue of that fact alone, be guilty of an offence. It was thus no longer necessary to consider whether an accused person was also, by reason of that fact, incapable of having control of his vehicle.

35 In *Lee Meng Soon*, Lee Seiu Kin J considered the 1996 legislative amendments and explained the position as follows (at [19]):

> Therefore it is clear that the prohibition encompassed by s 67(1) covers the situation where a person drives a vehicle while:
>
> > (a) he is incapable of having proper control over his vehicle on account of alcohol, even though the amount of alcohol in his body does not exceed the prescribed limit; and
> >
> > (b) the amount of alcohol in his body exceeds the prescribed limit even though he is capable of proper control of his vehicle.
>
> Therefore, the Legislature had decided that a person who has consumed such amount of alcohol that his breath or blood alcohol level exceeds the prescribed limit *is likely to be incapable of driving a vehicle safely*, and that as a matter of policy, he should be prohibited on pain of punishment under penal law from driving *irrespective of whether he is capable of so doing*.
>
> [emphasis added]

36 In summary, the offence under s 67(1)(*b*) of the RTA targets persons who are *assumed* irrebuttably – solely by virtue of their alcohol level – to be *incapable of having proper control* of their vehicle. The assumption that such persons are incapable of driving arises "as a matter of policy" (to use the words of *Lee Meng Soon*), regardless of whether, as a matter of fact, they are or are not incapable of such control.

37 Following the 1996 amendments, the alcohol level of a driver is no longer just a means of proving incapability of proper control. Instead, exceeding the prescribed limit precludes arguments over a driver's actual inability to drive. However, it is evident that while the offences under ss 67(1)(*a*) and (*b*) are formally separate offences, they serve a common purpose, which is to keep persons, who are or might likely be unfit to drive – in the sense that they are incapable of having proper control of their vehicle due to their alcohol intake – off the roads. A driver's alcohol level serves as an indicator of his inability or unfitness to drive due to his alcohol intake. This provides a reason for imposing heavier punishment on drivers with higher alcohol levels. There is an increased need for protection of the public from such drivers, given the enhanced threat to public safety posed by the correspondingly more severe impairment of their ability and fitness to drive.

38 By enacting an outright prohibition against driving with an excessive alcohol level, Parliament makes its stance against drunk driving clear – it is to stamp out the scourge of drunk driving which is a serious menace to the safety of the community. Put shortly, these stricter laws against drunk driving seek to ensure the *physical safety of road users*. As the Minister explained in his speech, one of the main purposes of the amendments was "to introduce measures which

will enhance road safety": *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at col 716.

A custodial sentence as the starting point for drunk drivers who cause injury

39 In this light, in my judgment – save in an exceptional category of cases which I explain below at [77] – when a person causes personal injury or damage to property as a result of his drunk driving and is charged and convicted of the offence under s 67(1)(*b*) of the RTA, the *starting point* for sentencing such a person is a custodial sentence. This does not mean that the offender must *necessarily* serve a custodial sentence, but rather that the *prima facie* position is that the custodial threshold has been crossed and a term of imprisonment should be imposed unless the mitigating factors warrant a departure from this starting point.

40 This approach is consistent with Parliament's desire to adopt a robust stance against drunk driving. Where such driving has in fact compromised the health and safety of innocent road users and pedestrians, the protection of which was the very aim of Parliament's amendments to the RTA, a strong sanction is warranted. This is consistent with the point I made in *Edwin Suse* at [29]:

> Where the danger caused by drunk driving eventuates in actual harm, this must also, in my judgment, be regarded as an aggravating factor. In such circumstances, the commission of the offence under s 67(1)(*b*) has *resulted in the very consequences that the criminalisation of that act was intended to prevent*. Thus, if the offender has been involved in a collision or accident that has caused property damage, injury or even death, *this would be an aggravating factor that should be reflected in both the quantum of the fine or length of an imprisonment sentence*, and in the period of disqualification. The weight to be given to this factor must of course depend on the nature and magnitude of damage or harm caused and all other relevant circumstances.
>
> [emphasis added]

41 In *Edwin Suse*, I rejected the Deputy Public Prosecutor's argument that the key consideration in determining the appropriate sentence for an offence under s 67(1)(*b*) ought to be the alcohol level of the offender, and not whether any property damage or injury was caused. I explained my view in the following terms (at [30]):

> The simple point is that the offence has been aggravated by reason of the harm being actual rather than merely potential, and I see no reason why the appropriate sentence should not reflect this. I acknowledge that there may be arguments over the vagaries of fortune – a drunk driver might fortuitously escape the consequence of harm – but *from a punitive or deterrent viewpoint, serious consequences that flow from antisocial, risk-taking behaviour which are the very consequences that were meant to be avoided by the enactment of the offence ought to be visited with sentences of appropriate severity.*
>
> [emphasis in original removed; emphasis added in italics]

42 In short, the causing of injury to others – and even more so, death – by a drunk driver represents the very evil that the ban on drunk driving was intended to prevent. Drunk driving has many potential consequences – such as disruption of traffic, fear and alarm to pedestrians and other drivers, damage to public and private property, and detriment to the drunk driver's own well-being – but at the very pinnacle of the potential harm is physical injury or death of those who are put in harm's way by the drunk driver's conduct. It therefore stands to reason that when such harm is in fact caused, the sentence imposed should tend toward the higher region of the sentencing range envisaged by Parliament for the s 67(1)(*b*) offence. This is also borne out in the reasoning of Lee J in *Lee Meng Soon* at [21] (a passage which I cited with approval in *Edwin Suse* at [15]):

> It is useful to consider the matter from the extreme ends of the spectrum of punishment. At the minimum end is the case of a person who, after consuming a small amount of alcohol, drives

> a vehicle on the road. He is able to control his vehicle but is stopped for a random breath alcohol test which discloses a level that is at or just over the prescribed limit. He is guilty of an offence under s 67(1)(*b*). In the absence of any other material factor, it would be appropriate to sentence him to the minimum fine of $1,000 or an amount not far from this sum. The disqualification period imposed under s 67(2) would be the minimum period of 12 months unless there are special reasons not to do so. *At the maximum end of the spectrum* is the case of a heavily intoxicated driver who careens from one side of the road to the other at high speed, *causing danger or even injury to other persons* and damage to property. The level of alcohol in his body is many times over the prescribed limit. *He would be accorded a punishment at the maximum end of the scale, with imprisonment for a term at or close to the maximum of six months* and disqualification for a long period, possibly for life.
>
> [emphasis added]

43 I make two further observations, each of which concerns drunk driving cases in recent years. First, I note that there appears to be an upward trend in the commission of the offence under s 67(1)(*b*) of the RTA. This correspondingly entails an increase in the risk of injury faced by road users and pedestrians. A search on the State Courts Sentencing Information and Research Repository ("SIR") database reveals the following statistics:

Year	**No of cases (probation)**	**No of cases (fine)**	**No of cases (imprisonment)**	**Total no of cases**
2011	0	506	14	520
2012	0	742	21	763
2013	0	901	26	927
2014	3	938	51	992
2015	0	1275	168	1443
2016	1	1152	187	1340

A brief review of these figures shows that since the start of the decade, there has been a steady uptick in the prosecution of the offence under s 67(1)(*b*) (albeit with a minor drop in 2016). There seems to have been a particularly sharp increase in the commission of the offence after 2014, including a tripling in the number of cases in which imprisonment sentences were meted out.

44 According to a Singapore Police Force report on the road traffic situation in 2016 that was tendered by the Prosecution, there was a slight decrease in drunk driving related accidents (2.9%) and arrests for drunk driving (7.9%) from 2015 to 2016, which is broadly in line with the slight drop in cases during this period as reflected in the SIR statistics (7.14%). The report emphasises (at para 9) that drunk driving remains a persistent threat to road safety in Singapore, and reiterates that such behaviour poses not only a risk to drunk drivers themselves but also to other road users. In recognition of the continuing need to detect and deter drunk driving, the report states that the Traffic Police will continue to undertake regular enforcement action such as the setting up of roadblocks. Separately, the Ministry of Home Affairs and the Traffic Police are reviewing existing penalties for road traffic offences with a view to increasing the penalties for offences resulting in death or hurt to others, especially in cases where drivers are under the influence of drugs or alcohol.

45 My second observation concerns the sentences meted out in more recent cases involving personal injury caused by drunk driving. Custodial sentences have, in several cases involving injury to victims, already been imposed by sentencing courts. The explicit adoption of such a starting point would therefore serve to rationalise the sentencing position, enhance uniformity of practice and reflect the appropriate sentencing stance.

The approach to sentencing

46 The general sentencing framework for the offence under s 67(1)(*b*) is set out in *Edwin Suse*. That approach can be shortly described. First, the court is to consider the extent to which the offender's alcohol level exceeds the prescribed limit. A table containing starting points as to the quantum of the fine and the length of the disqualification period to be imposed is set out at [22] of *Edwin*

Suse. Second, the court is to consider the existence of any aggravating or mitigating circumstances, in order to increase or decrease the degree of punishment as appropriate. I identified four broad factors that may aggravate or mitigate the gravity of an offence under s 67(1)(*b*) of the RTA. These are, first, the actual or potential danger posed by the offender's conduct in committing the offence; second, the real or actual consequences of the offender's conduct (such as property damage, injury or death); third, the conduct of the offender upon apprehension; and fourth, his reasons or motivations for driving. I emphasised in *Edwin Suse* at [22]–[23] that the benchmark fines and disqualification periods identified are only neutral starting points that take into account the alcohol level of the offender and not any aggravating or mitigating circumstances. Crucially, the precise sentence to be imposed in any individual case "will, as it must always do, depend on an overall assessment of all the factual circumstances". These considerations continue to apply in relation to the sentencing of a drunk driver who causes injury to another.

47 In *Public Prosecutor v Koh Thiam Huat* [2017] SGHC 123 ("*Koh Thiam Huat*"), See Kee Oon J held at [41] that there are two principal parameters to which a sentencing court would generally have regard in evaluating the seriousness of a crime: (a) the harm caused by the offence; and (b) the culpability of the offender. See J defined "harm" as the measure of the injury which has been caused to society by the commission of the offence, and "culpability" as the measure of "the degree of relative blameworthiness disclosed by an offender's actions". His culpability is "measured chiefly in relation to the extent and manner of the offender's involvement in the criminal act". In the context of dangerous driving under s 64(1) of the RTA (which was the offence in question in that case), it was important to have regard to both the actual and potential harm caused. The culpability of a person who had

committed an offence under s 64(1) of the RTA would be enhanced if his manner of driving had been particularly dangerous, for instance if he had been speeding, drunk driving, sleepy driving or driving while using a mobile phone, or if he had deliberately decided to drive in a dangerous manner. See J held as follows (at [42]):

> … Given the range of sentences prescribed by s 64(1) of the RTA, I would agree that a fine would suffice where there is a low level of harm caused by the offence (or none at all) and the accused's culpability is also low (substantially the Prosecution's first submission …. On the other hand, imprisonment would be warranted where there is a high level of harm caused by the offence and the accused's culpability is also high (substantially the District Judge's approach …. Situated between these two obvious extremes are myriad cases of varying levels of harm and culpability, and it would not be fruitful to attempt to lay down too fine a rule. It suffices to state that the role of a sentencing court is to appreciate the facts in each case and properly situate the case before it along the continuum of severity, having regard to both the level of *harm* and the accused's *culpability*, as well as the applicable *mitigating and aggravating factors*.
>
> [emphasis in original]

48 In my judgment, See J's categorisation of the sentencing factors into those that go toward the actual or potential harm caused by the offender's conduct and those that concern the offender's culpability offers a helpful and principled distinction. It captures the notion that criminal sanctions are imposed not merely to punish and deter behaviour that causes harm to society, but also to censure an offender for the "relative blameworthiness" of his conduct, as See J put it.

49 I consider that the sentencing considerations identified in *Edwin Suse* similarly delineate a range of harm- and culpability-based factors, to which I now return.

Real consequences of the act

50 In *Edwin Suse*, I explained at [29] that "[t]he weight to be given to this factor [*ie,* the actual consequences of the offender's conduct] must of course depend on the nature and magnitude of damage or harm caused and all other relevant circumstances." The crucial consideration here is therefore the *nature and degree of personal injury caused*. Fractures, organ failure and permanent disabilities ought, for instance, to warrant heavier sentences than bruises, abrasions and superficial lacerations. Shortly put, the graver the consequences of the drunk driving, the more serious the punishment that should be visited on the offender. This also means that the more serious the hurt and injury caused, the more difficult it will tend to be for the offender to persuade the court that it ought to depart from the starting position that the offender should receive a custodial sentence.

51 This will be a factual inquiry for the sentencing court, having regard to relevant medical reports and opinions. The court should also have regard to the degree of permanence of the injury as well as the effects that such injury has on the employment and lifestyle of the victim, bearing in mind that any such considerations should be supported by the necessary medical evidence. In the unfortunate situation that death is caused by the drunk driver, the gravity of having caused that ultimate degree of physical harm ought to be reflected in the sentence imposed on the offender.

The offender's alcohol level

52 The same principle as that identified in *Edwin Suse* at [22] applies – "in general, the higher the alcohol level, the greater should be [the punishment]". There are two reasons why this is correct as a matter of principle. The first

reason concerns the potential consequences of a high alcohol level which in turn affects the risks imposed on other road users. The higher the offender's alcohol level, the more likely it is that his driving ability has been impaired and the greater the extent of the likely impairment.

53 The second reason concerns the culpability of the offender. The higher the offender's alcohol level, the higher the extent of his disregard for the law and for the well-being of others. It indicates the offender's level of personal responsibility and, consequently, his "relative blameworthiness" and culpability. This is relevant even in a case where there is no indication of actual impairment of one's driving ability (for instance, where the offender does not display any lack of control over his vehicle). Lee J alluded to this point in *Lee Meng Soon* at [24]:

> *A person knows the amount of alcohol he has consumed. The higher the amount of alcohol he has consumed, the greater would be his knowledge that he is likely to be "over the limit". So if he chooses to drive after consuming a large quantity of alcohol, it is obviously an aggravating factor of the offence.* Therefore there will be situations where it will be appropriate to sentence the offender to imprisonment where the amount of alcohol in his breath or blood is much higher than the prescribed limit, even though there is no evidence of any lack of control when he drove the vehicle on the road.
>
> [emphasis added]

Similarly, in *Ong Beng Soon v Public Prosecutor* [1992] 1 SLR(R) 453 at [7], Yong Pung How CJ held that "[a] person substantially over the limit is obviously in *more flagrant violation* of the [RTA] than a person marginally over the limit" [emphasis added].

54 For the same reasons, it is not open to a driver to say that he believes he generally has a high alcohol tolerance and that therefore when he drives after

drinking he is not being irresponsible in relation to the safety of others. Such a driver remains in disregard of the *law*, which pegs the commission of the offence under s 67(1)(*b*) of the RTA only to alcohol levels and not to the levels of actual or perceived impairment of driving ability.

Actual or potential danger posed by the offender's conduct

55 As explained in *Edwin Suse* at [27]–[28], the actual or potential danger posed by the offender's conduct in committing the offence may be manifested by the manner of his driving, such as his degree of lack of control of the vehicle or the fact that he was driving dangerously or recklessly.

56 Very often, such dangerous or reckless driving following from the offender's alcohol consumption will result in a violation of traffic rules, such as speeding, beating a red light, swerving from lane to lane, or in more extreme cases, driving against the flow of traffic or driving off the road. All of this is capable of providing evidence to the sentencing court as to the degree of control (or lack thereof) that the drunk driver had over his vehicle. Other circumstances that increase the danger to road users include driving during the rush hour or within residential or school zones, driving a heavy vehicle, or setting out to drive a substantial distance to reach a destination: *Edwin Suse* at [28].

Conduct upon apprehension and reasons for driving

57 This was discussed at [32] and [33] of *Edwin Suse* and as it does not arise in this case, I do not propose to reiterate the discussion there.

Illustrative sentencing

58 It is helpful here to turn to some recent sentencing precedents for the s 67(1)(*b*) offence where injury was caused. It may be useful to categorise these cases into the following four categories:

(a) Where a high fine, rather than a custodial sentence, was ordered;

(b) Where a short imprisonment term was imposed;

(c) Where a substantial imprisonment term was imposed; and

(d) Where a term of imprisonment approaching the maximum statutory permitted term was imposed.

59 I will first describe these cases individually before summarising some common features in each category. It is necessary to appreciate the specific facts of these precedents in order to draw suitable analogies to a given case before the court.

Imposition of a fine

60 In *Public Prosecutor v Ong Beng Hock* [2011] SGDC 330 ("*Ong Beng Hock*"), the offender rode his motorcycle after having consumed beer. He failed to keep a proper lookout and collided into a pedestrian who was crossing the road. The pedestrian was treated as an outpatient and discharged on the same day without medical leave. He sustained abrasions on the left shoulder and left cheek, and a swollen left foot. The offender's blood alcohol content level was 139mg of alcohol in every 100ml of blood (about 1.74 times the prescribed limit of 80mg per 100ml of blood). The offender pleaded guilty to a charge under s 67(1)(*b*) of the RTA and a charge for inconsiderate driving under s 65(*b*) of the

RTA. The district judge imposed a fine of $3,000 and a disqualification period of two years for the drunk driving charge, and a fine of $800 for the inconsiderate driving charge. The offender's appeal against sentence was dismissed.

61 In *Public Prosecutor v Yim Kheen Kwun* (MA 9256/2016/01) ("*Yim Kheen Kwun*"), the offender failed to keep a proper lookout and collided head-to-rear into a motorcycle which was carrying the two victims. The first victim suffered multiple superficial abrasions and his left middle finger was dislocated (but this was remedied during his medical consultation). He was subsequently discharged with seven days' medical leave. The second victim suffered multiple superficial abrasions and was admitted overnight for observation. She was then discharged with six days' medical leave. The offender had a BAC level of 72µg of alcohol per 100ml of breath (2.06 times the legal limit of 35µg of alcohol per 100ml of breath). The offender was charged with the s 67(1)(*b*) offence and a second charge for inconsiderate driving under s 65(*b*) of the RTA. The district judge noted that the injuries suffered by the victims were not serious and property damage was minor. She imposed a fine of $4,000 and a disqualification period of 36 months for the s 67(1)(*b*) offence, and $800 and a disqualification period of three months for the s 65(*b*) offence. On appeal, the High Court found no basis to disturb the district judge's exercise of sentencing discretion and dismissed the appeal.

Short imprisonment term

62 In *Public Prosecutor v Kim Seung Shik* [2009] SGDC 327, the offender had been drinking at a company event. When exiting a car park, he failed to give way to a taxi, which had the right of way. As a result, his car collided into the side of the taxi. He had also hit a wall as he was exiting the car park. No injuries

were caused and property damage was light. The offender's BAC level was 117μg per 100ml of breath (3.34 times the legal limit). He pleaded guilty to charges of drunk driving and inconsiderate driving, with a charge for driving without due care and attention taken into consideration. He was untraced. The offender was initially sentenced to three weeks' imprisonment and two years' disqualification for the drunk driving charge, but the imprisonment term was reduced to one week on appeal.

63 In *Public Prosecutor v Mohamed Nawaz Kamil* (unreported, DAC 930727/2014 & Ors), the offender met his friends for drinks before driving toward home. At some point, he began driving against the flow of traffic and collided into the left side of the victim's taxi. This caused the victim's taxi to veer to the right, mount the kerb, and hit some fencing. The offender's car likewise veered to one side, mounted the kerb and stopped. The victim suffered a head contusion. On arrival at the hospital, he appeared to be dazed and was unable to recall the events that led to the accident. However, he was found to have no major injuries and was discharged on the same day with 14 days' medical leave. The offender was found unconscious in his car. He was found to have a blood alcohol level of 211mg of alcohol per 100ml of blood (2.64 times the prescribed limit). The front portion of the victim's taxi was so badly damaged that it had to be scrapped. The offender's vehicle was likewise badly damaged. The offender pleaded guilty to one charge of drunk driving, one charge for doing a rash act so as to endanger human life under s 337(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), and another charge for drunk driving for a separate incident. He was sentenced to two weeks' imprisonment and four years' disqualification for the drunk driving charge arising from the described events.

64 In *Public Prosecutor v Selvakumar s/o Paneer Selvam* [2008] SGDC 48, the offender failed to maintain proper control of his car. His car veered right, mounted the centre divider, grazed a tree, went back on the road, collided into the rear of the first vehicle, then veered to the left and collided into the rear of a second vehicle. The impact caused the driver of the second vehicle to lose control, veer to the left and collide into a lamp post. The driver of the second vehicle sustained minor injuries while the driver of the first vehicle was not injured. The offender's blood alcohol level was 226mg of alcohol per 100ml of blood (2.83 times the legal limit). He pleaded guilty to a charge of drunk driving and another charge for inconsiderate driving. He was untraced. In the result, the offender was sentenced to two weeks' imprisonment and disqualified from driving for three years for the drunk driving charge.

65 In *Public Prosecutor v Chan Ee* [2010] SGDC 165, the offender pleaded guilty to a charge of drunk driving and another charge of dangerous driving under s 64(1) of the RTA (which carries a punishment, for first offenders, of a fine not exceeding $3,000 or imprisonment for a term not exceeding 12 months or to both). He drove against the flow of traffic on the Pan Island Expressway, resulting in a collision with an oncoming lorry. The impact caused the lorry to overturn and land on its right side. The driver of the lorry suffered abrasions and swells on his right hand. He received outpatient treatment and was given medical leave for two days. The offender was found to have 61µg of alcohol in every 100ml of breath (1.74 times the legal limit). He was sentenced to two weeks' imprisonment and disqualified from driving for two years for the drunk driving charge, and to three weeks' imprisonment with one year's disqualification for the dangerous driving charge.

66 In *Lee Meng Soon*, the offender failed to keep a proper lookout at a signalised cross-junction and collided with a motorcycle which was travelling in front of his car. The rider and pillion rider both sustained injuries. The pillion rider, in particular, suffered open comminuted fractures and near-amputation at the distal, middle and proximal phalanges of the left third toe, as well as a crack intra-articular fracture of the distal left radius. The offender stopped to look back but eventually drove away. He was apprehended thereafter. His breath contained 77μg of alcohol per 100ml of breath (2.2 times the legal limit). The offender pleaded guilty to a charge of drunk driving and other charges for inconsiderate driving, failing to render assistance, and removing his vehicle after an accident without the authority of a police officer. A charge of failing to stop after an accident was taken into consideration. Following the Prosecution's appeal, he was sentenced to two weeks' imprisonment and disqualified from driving for three years for the drunk driving charge.

67 Finally, in *Public Prosecutor v Sim Yew Jen Jonathan* [2008] SGDC 272, the offender failed to maintain proper control of his car whilst making a turn, causing it to mount a roadside kerb and hit a traffic light pole, which was dislodged as a result. His car then hit a lamp post before coming to a stop. His passenger sustained slight injury. His breath was found to contain 57μg of alcohol in every 100ml of breath. (1.63 times the legal limit). He pleaded guilty to charges for drunk driving and for driving without due care and attention. He was sentenced to three weeks' imprisonment and disqualified from driving for two years for the drunk driving charge.

Substantial custodial sentence

68 As a preliminary matter, it may be noted from the cases that where an offender under s 64(1)(*b*) also causes *death* to a victim, such an offender will

typically face two charges (alongside any other charges that may have been brought against him): the first for drunk driving under s 67(1) of the RTA, and the second for causing death by rash or negligent act under s 304A(*a*) (for rash acts) or s 304A(*b*) (for negligent acts) of the Penal Code. The case law also indicates that in general, the sentence imposed on the offender for the drunk driving charge will be a substantial custodial sentence, although not necessarily one that tends toward the maximum permissible punishment of six months' imprisonment.

69 In *Public Prosecutor v Wong Yew Foo* [2013] 3 SLR 1198, the offender failed to keep a proper lookout while driving and collided into a cyclist, who died as a result of his injuries. The offender had been drinking prior to the collision and was found to have a BAC level of 42μg of alcohol per 100ml of breath (1.2 times the prescribed limit). He was convicted of one charge under s 304A(*b*) of the Penal Code (causing death by negligent act) and one charge for drunk driving. The district judge imposed a $10,000 fine and four years' disqualification from driving, and a $2,500 fine with two years' disqualification, for the two charges respectively. On appeal, Chan Seng Onn J considered the sentencing precedents involving offenders charged with both drunk driving and causing death by negligent act. He referred to the decisions in *Public Prosecutor v Mohamed Zairi bin Ahmad* (MAC 11783/2011 and DAC 39997-39999/2011), where the offender was sentenced to two months' imprisonment and five years' disqualification for the offence under s 67(1)(*b*) of the RTA, and *Public Prosecutor v Goh Teck Guan* (MAC 2209 and 2210/2013) where the offender, who had a previous conviction under s 67(1)(*b*), received enhanced punishment of four months' imprisonment, a $3,000 fine and five years' disqualification. Chan J also observed at [58] that "[t]he recent unreported precedents also evince the imposition of a custodial sentence of more than a few weeks even in cases

where the accused's alcohol level was low". He set aside the sentences imposed by the district judge and imposed a sentence of four months' imprisonment and six years' disqualification for the charge of causing death by negligent act and two months' imprisonment and two years' disqualification for the drunk driving charge.

70 In *Public Prosecutor v Nur Azhar Bin Sulaiman* [2013] SGDC 79, the offender and the deceased went for drinks and thereafter left for home, with the deceased seated as a pillion rider on the motorcycle. The offender's motorcycle collided into a guardrail and the deceased was pronounced dead at the scene due to his injuries. The offender had a blood alcohol level of 83mg per 100ml of blood (1.04 times the prescribed limit). He was convicted of one charge under s 304A(*b*) of the Penal Code (for a negligent act causing death) and another charge under s 67(1)(*b*) of the RTA (for drunk driving). The district judge sentenced the offender to two weeks' imprisonment and five years' disqualification from driving for each of the two charges. In reaching her decision, she considered several precedents where death was caused by a drunk driver, including the following:

(a) *Public Prosecutor v Zaw Myint Tun* (DAC 16003 and 16004/2009) – the offender swerved his lorry abruptly and collided into a motorcycle, causing the motorcyclist's death. The offender was sentenced to eight months' imprisonment and eight years' disqualification for the offence under s 304A(*b*) of the Penal Code and five months' imprisonment and six years' disqualification for drunk driving.

(b) *Public Prosecutor v Tan Siam Poo* (DAC 25841/2009) – the offender swerved and collided into a motorcycle, and then ran

> over the pillion rider causing his death. He was sentenced to six months' imprisonment and eight years' disqualification for the offence under s 304A(*b*) of the Penal Code and six months' imprisonment and 13 years' disqualification for drunk driving.

71 Finally, in *Public Prosecutor v Koh Chin Leong* [2014] SGDC 11, the offender claimed trial to charges for causing death by dangerous driving, and for failing to render assistance after involvement in an accident. When the offender began driving, he had not slept for 21 continuous hours and had consumed two to three glasses of brandy. Disregarding the speed limit, his intoxication and lack of sleep, he drove at a high speed and failed to notice a motorcycle and a minibus travelling ahead of him. He collided into the rear of both vehicles, hitting the motorcycle twice. The motorcyclist died of severe multiple injuries involving more than one organ system. After the collision, the offender walked away from the scene without rendering assistance, although he returned to the scene half an hour later, after the police had arrived. He was found to have a BAC level of 45μg of alcohol per 100ml of breath (about 1.29 times the prescribed limit). The district judge found the offender guilty of both charges. The offender also admitted to an additional charge of drunk driving under s 67(1)(*b*) of the RTA. The district judge sentenced the offender to 12 months' imprisonment and eight years' disqualification for the charge for causing death by dangerous driving, four months' imprisonment and four years' disqualification for the offence of drunk driving, and two months' imprisonment and 18 months' disqualification for failing to render assistance. This is an illustration of a case that involved a number of serious aggravating factors and that therefore warranted the imposition of a substantial custodial sentence for the drunk driving charge.

Toward the maximum custodial sentence

72 As was envisaged in *Lee Meng Soon* at [21]:

> … At the maximum end of the spectrum is the case of a heavily intoxicated driver who careens from one side of the road to the other at high speed, causing danger or even injury to other persons and damage to property. The level of alcohol in his body is many times over the prescribed limit. He would be accorded a punishment at the maximum end of the scale, with imprisonment for a term at or close to the maximum of six months and disqualification for a long period, possibly for life.

Sentencing guidelines and ranges

73 It will not be possible definitively or exhaustively to identify the particular features of cases for which particular types or lengths of sentences will be appropriate. In the final analysis, the appropriate sentence to be imposed will be the product of *a fact-sensitive exercise of discretion*, taking into account all the circumstances of the case. However, generalising from the precedents described above, certain broad features may be observed.

74 To begin, it seems to me that in assessing the overall gravity of the offence, it is (as noted above) relevant to consider, first, the degree of harm caused; and second, the culpability of the offender. In relation to the latter consideration, this will entail consideration of the extent to which the offender's alcohol level exceeds the prescribed limit as well as the manner of the offender's driving.

75 In my judgment, it is possible to calibrate these factors as follows:

(a) Harm

(i) Slight – slight or moderate property damage and/or slight physical injury characterised by no hospitalisation or medical leave;

(ii) Moderate – serious property damage and/or moderate personal injury characterised by hospitalisation or medical leave but no fractures or permanent injuries;

(iii) Serious – serious personal injury usually involving fractures, including injuries which are permanent in nature and/or which necessitate significant surgical procedures;

(iv) Very serious – loss of limb, sight or hearing or life; or paralysis.

(b) Culpability

(i) Low – low alcohol level *and* no evidence of dangerous driving behaviour;

(ii) Medium – moderate to high alcohol level *or* dangerous driving behaviour;

(iii) High – high alcohol level *and* dangerous driving behaviour.

76 To prevent these guidelines from being misconstrued, I emphasise that these are indicative categories to assist analysis and to be assessed as a matter of common sense. These guidelines also pertain only to the crossing of the

custodial threshold in cases involving first offenders where physical injury and/or property damage has been caused. It does not affect the consideration of whether the custodial threshold is crossed in other cases including those where no harm to person or property has actually eventuated; that is a matter to be determined in accordance with the guidance set out in *Edwin Suse* and other appropriate guiding precedents.

77 In my judgment, in the context of the present category of cases, the custodial threshold will not typically be crossed in cases involving slight harm *and* low culpability. In any other setting, the custodial threshold would, in general, be crossed. As mentioned at [39] above, this is a starting point to the analysis. This means that save in a case involving slight injury and low culpability, the *prima facie* position is that the custodial threshold has been crossed and unless this is displaced by reason of sufficiently strong mitigating factors, the court will then have to determine the length of the custodial sentence to impose on the offender. But where the court is of the view that the offender is able to show such mitigating factors that warrant a departure from this starting point, it remains open to the court to consider other sentencing options, including that of a fine.

78 In every other case outside of this exceptional category (*ie,* involving slight harm and low culpability), the sentencing court should calibrate the seriousness of the offence by considering where on the continuum of harm and culpability the offender falls and thereby arrive at an indicative sentence that has due regard to the entirety of the sentencing range permissible under statute. In cases where the custodial threshold is crossed, though only just, it may be appropriate to sentence the offender to a term of imprisonment of a single day; while in cases that involve very serious injury and a high degree of culpability,

the indicative term should approach the maximum end of the sentencing range. I set out the following indicative sentencing ranges, calibrated according to the degree of harm caused and the offender's culpability, that the court should consider once it is satisfied that the custodial threshold has been crossed. This is meant to assist sentencing courts by providing a rational framework for assessing the appropriate sentence by reference to the relevant degree of harm and culpability. I reiterate that this is not meant to be rigidly applied. Thus, in an appropriate case, having regard to the particular facts that are before it, a sentencing court might well determine that it is just to impose a sentence that does not fall squarely in line with these guidelines. Subject to that observation, I consider that in the exercise of its sentencing discretion, the court should assess the relevant interaction of harm and culpability having regard to what has been set out below:

(a) A term of imprisonment of between four and six months in cases of very serious harm and high culpability;

(b) A term of imprisonment of between two and four months in cases of serious harm and high culpability or of very serious harm and medium culpability;

(c) A term of imprisonment of up to two months in cases of moderate harm and high culpability, of serious harm and medium culpability, of very serious harm and low culpability or of slight harm and high culpability; and

(d) A term of imprisonment of up to a month in cases involving any other combinations of the degrees of harm and culpability identified at [75] above.

79 With great respect to the authorities I have cited at [60]–[72] above, it has to be said that not all of these would fit within the approach I have outlined. In particular, on my analysis, the custodial threshold would have been crossed in *Ong Beng Hock* and *Yim Kheen Kwun*; and the indicative sentence would likely have been higher in at least some of the other cases. But I consider it essential that the sentencing court endeavour to rationalise and use the sentencing range afforded it by the legislation by taking due account of the relevant sentencing considerations.

The mitigating value of public service and contributions

80 I turn to the second broad issue, which is the mitigating value of public service and contributions. In *Goh Kah Heng (alias Shi Ming Yi) v Public Prosecutor and another matter* [2010] 4 SLR 258 at [94], Tay Yong Kwang J (as he then was) said as follows:

> In the sentencing process, the court is sometimes faced with the arduous task of deciding the punishment for a dishonourable act committed by an otherwise honourable person. In William Shakespeare's *Julius Caesar*, Mark Antony famously said:
>
> > The evil that men do lives after them,
> >
> > The good is oft interred with their bones,
> >
> > …
>
> In my opinion, *one wrongdoing does not have to be so overwhelming that the many good deeds are completely forgotten and interred with the bones*. Even the Prosecution has fairly and correctly accepted that [the accused] did a lot of good for Ren Ci.
>
> [emphasis added]

81 As observed by Julian V Roberts in "Punishing, more or less: Exploring aggravation and mitigation at sentencing" in *Mitigation and Aggravation at*

Sentencing (Julian V Roberts ed) (Cambridge University Press, 2011) ("*Mitigation and Aggravation*") at p12, there is a "strong intuitive appeal to a policy of mitigating sentences for offenders who have a history of very creditable social behaviour". The difficulty lies in determining whether this intuitive sense is properly grounded in sentencing principles.

The relevance of public service and contributions in sentencing practice

82 I begin by acknowledging that the courts have sometimes attributed mitigating weight to the past good works of an accused person and to evidence of good character. Indeed, as a matter of practice, accused persons often seek to adduce positive testimonials, awards and character references in the hope that these materials will lighten the sentence they receive.

83 The case of *Knight Glenn Jeyasingam* provides a good example. The offender pleaded guilty to a charge of attempted cheating and a second charge under the Prevention of Corruption Act (Cap 241, 1985 Rev Ed). He was sentenced by the District Court to two months' imprisonment for the first charge and one month's imprisonment for the second. On appeal, the High Court set aside the imprisonment sentences and in their place imposed a fine of $7,000 for the first charge and a fine of $10,000 and one day's imprisonment for the second. A major consideration was that the offender had "a distinguished record of public service", having served as Senior State Counsel in the Attorney-General's Chambers, Director of the Commercial Affairs Department of the Ministry of Finance and lecturer in the Faculty of Law of the National University of Singapore, and having been awarded the Public Administration Medal (Gold).

84 *Siah Ooi Choe v Public Prosecutor* [1988] 1 SLR(R) 309 provides an illustration of relevant contributions outside the public sector. The High Court reduced the sentence of nine months' imprisonment for abetting an offence of inducing a bank to give credit to his company by deceitful means under s 406(*a*) of the Companies Act (Cap 50, 1985 Rev Ed) to three months' imprisonment. The court noted at [4] that "[u]ntil the commission of the offences, the appellant had an unblemished record; indeed … an admirable record". He was "an innovator and an inventor", helping to "[place] Singapore on the world map" in the field of manufacture and processing of plastic film. He had also "served in two out of the nine sub-committees of the Economic Committee of Singapore and had been active in community work and development". In the circumstances, the High Court was satisfied that the offender's "character and his contribution to society and the country" meant that a short term of imprisonment would suffice.

85 In *Public Prosecutor v Kang Seong Yong* [2004] SGDC 230, the offender pleaded guilty to two charges of making a false statement in order to obtain an employment pass under s 57(1)(*k*) of the Immigration Act (Cap 133, 1997 Rev Ed), and was sentenced to a fine of $4,000 for each charge. In passing sentence, the district judge gave weight to the offender's contributions to the Korean community in Singapore in "assisting Koreans to settle down in Singapore and … who invest in Singapore". The offender was said to have "made great contribution to the Singapore tourist industry and economy as he has encouraged Korean tourists to visit Singapore for holidays to buy the local goods and products and to invest in Singapore's various trades". However, Yong CJ allowed the Prosecution's appeal, enhancing the sentence to one month's imprisonment for each charge, partly on the ground that these factors

were "not so exceptional as to justify a departure from the sentencing norm": *Public Prosecutor v Kang Seong Yong* [2005] 2 SLR(R) 169 at [33].

86 Contributions of arguably less significance and degree have nevertheless been taken into account as a mitigating factor. In *Public Prosecutor v Foo Jong Kan and another* [2005] SGDC 248, the district judge held at [23]–[24] that the first offender's positions on public bodies such as the Strata Titles Board and his philanthropy, as well as the second offender's active community work in Community Development Councils and in various temples and his National Day Award in 2003, "merit[ed] consideration in sentencing as they showed good character and tangible contribution to the welfare of society", citing *Knight Glenn Jeyasingam*. And in *Public Prosecutor v Lim Beng Cheok* [2003] SGHC 54, the High Court accepted that the appellant, who was a mathematics home tutor and had pleaded guilty to committing numerous sexual offences on his students, had had "tremendous beneficial influence … on the lives of many of his students" and that this "was a strong mitigating factor", although this was ultimately outweighed by his abuse of his position of trust and authority.

The search for a principled justification

87 In my judgment, it is necessary first to identify the conceptual basis upon which it may be justifiable to admit evidence of positive contributions and good character in the context of sentencing. In none of the cases cited above was this fully explored.

88 This and other related questions were considered recently in *Ang Peng Tiam v Singapore Medical Council and another matter* [2017] SGHC 143 ("*Ang Peng Tiam*"). That case involved an appeal by a prominent oncologist against his conviction on charges of professional misconduct by a disciplinary tribunal.

The court held at [93] that in the specific context of disciplinary proceedings for professional misconduct, the offender's eminence and seniority would be regarded as an aggravating factor because those characteristics amplify the negative impact on public confidence in the integrity of the profession when the offender is convicted. More generally, the court also considered why and how an offender's good character and past contributions to society operate as mitigating factors in sentencing. It observed that there were two commonly proffered justifications as to why such an offender ought to be given credit. First, an offender's good character and good works might suggest that his conduct was out of character and thus to be regarded as an aberration. Second, it might be thought that an offender who has made contributions to the public is less deserving of punishment than someone who has not. The court rejected (at [99]–[101]) the second justification because the objective in passing sentence is only to punish the offender for the wrong that he has done and the harm occasioned. Further, it is not the place of the court to judge the moral worth of those who come before it. Nevertheless, it accepted (at [102]–[103]) the first justification, namely that an offender's long and unblemished record may be regarded as a mitigating factor of modest weight if it allows the court to infer that he was acting out of character, and hence not in need of specific deterrence although this will be readily overridden by other considerations such as the need for general deterrence.

89 The present case provides an opportunity to elaborate on the reasoning in *Ang Peng Tiam* and to set out further guidance as to how a sentencing court should consider the relevance of an offender's claimed good character and contributions to the public.

90 In *Aggravation, Mitigation and Mercy in English Criminal Justice* (Blackstone Press Limited, 1999) at p111, Prof Nigel Walker explains that the second justification mentioned above – that an offender who has done good works is morally deserving of a lighter sentence – rests on two assumptions: (a) that offenders are being sentenced "not for culpability but for moral worth"; and (b) that "moral worth can be calculated by a moral form of bookkeeping, in which spectacular actions count for more than unobtrusive decency". Along similar lines, Prof Andrew Ashworth in *Sentencing and Criminal Justice* (Cambridge University Press, 6th Ed, 2015) ("*Sentencing and Criminal Justice*") observes at p190 that to grant mitigation on the grounds of public contribution "implies that passing sentence is a form of social accounting, and that courts should draw up a kind of balance sheet when sentencing", where the offence committed would be "the major factor on the minus side, and any creditable social acts would be major factors on the plus side".

91 In my judgment, both the assumptions identified by Prof Walker as those on which it might be thought that an offender with a hitherto sound record of behaviour or contributions to the public should be rewarded in some way, rest on weak foundations. The first assumption, that offenders are sentenced not for culpability but on their moral worth, is unsound because an offender should only be sentenced *for the offence that he has committed*, and in respect of this, his culpability and the harm caused are the dominant considerations. As See J explained in *Koh Thiam Huat* (see [47]–[48] above), the two principal parameters to be considered by a sentencing court are the harm caused by the offence, in terms of the "measure of the injury which has been caused to society *by the commission of the offence*" [emphasis added], and the culpability of the offender, measured by "the degree of relative blameworthiness disclosed *by an offender's actions*" [emphasis added]. The relevant sentencing considerations

are therefore inescapably tied to the offence before the court. Prof Ashworth makes a similar point in his chapter "Re-evaluating the Justifications for Aggravation and Mitigation at Sentencing" in *Mitigation and Aggravation* at p29, where he argues that positive social contributions:

> … are separate from the crime and should elicit a response in a different forum rather than being parachuted into the sentencing process. The question is whether the sentencing process is properly expected to incorporate a balance sheet of all the good and bad deeds of the offender in social, family and community circles. The principled answer is that it should not be so expected: *a court should take into account of previous convictions or absence of convictions, and of aggravating and mitigating factors relevant to harm and culpability*, but it is *neither appropriate nor always possible for it to attempt this wider exercise in social accounting*. …
>
> [emphasis added]

92 The second assumption, which views the court as a sort of moral bookkeeper, is equally unsound. It is emphatically not the role of the sentencing court to adjudicate or pass judgments on moral worth, nor is the court well-equipped to do so. While it is true that the court's assessment of culpability involves an examination of the moral blameworthiness of the offender (see [48] above), this is not a broad inquiry into the way the offender has lived his life and the good or bad deeds that have marked his years. The inquiry has a far narrower scope than this; it concerns only the blameworthiness of the offender in the commission of the offence of which he has been convicted. Prof Ashworth expresses a similar view in *Sentencing and Criminal Justice* at p190 when he observes that it is not "a court's proper function to concern itself with these matters… The court is passing sentence for the particular crime(s) committed. There are civil awards for bravery and for outstanding service to the community." In addition, I consider that there are serious issues of fairness with taking such matters into account. Julian V Roberts observes in "Punishing, more

or less: Exploring aggravation and mitigation at sentencing" in *Mitigation and Aggravation* at pp11–12 (footnote 12) that acts of social contribution not only have an adventitious element in that such opportunities may arise only by chance, such opportunities are also not equal across social strata. In other words, those with resources to make such contributions tend to be better placed and more likely to avail themselves of such an argument, as compared to less privileged offenders. This was also noted in *Ang Peng Tiam* at [101].

93 It is evident that there are theoretical pitfalls with according mitigating value to an offender's contributions to the public and his good character. At the same time, it cannot be denied that there have been several cases in which the rendering of services of substantial value to the community has been regarded by the court as a mitigating factor.

94 In my judgment, it is necessary to justify the mitigating value of public service and contributions *by reference to the four established principles of sentencing*: retribution, prevention, deterrence (both specific and general) and rehabilitation (see *Public Prosecutor v Tan Fook Sum* [1999] 1 SLR(R) 1022 ("*Tan Fook Sum*") at [15]). In this regard, I agree with the view expressed by Prof Allan Manson in "The search for principles of mitigation: integrating cultural demands" in *Mitigation and Aggravation* at p45, where he argues that facts concerning the character or contributions of the offender:

> … must be relevant to the sentencing process. Otherwise it is superfluous narrative that creates the potential for irrelevant considerations. *So if character matters, it must relate to an instrumental objective such as rehabilitation or incapacitation.* Dangerousness increases the prospect of longer incapacitation, while prior success in life may suggest greater rehabilitative prospects. … [A]n unexplained resort to character is a potential sentencing danger. [emphasis added]

95 Richard Edney and Mirko Bagaric have similarly emphasised the importance of having reference to key sentencing objectives in *Australian Sentencing: Principles and Practice* (Cambridge University Press, 2007) at p149:

> … When considering selective mitigating factors *it is important to bear in mind their relationship to particular sentencing objectives. To do otherwise is to permit the task of sentencing to be independent of its theoretical rationale.* It is important to bear in mind that the mitigating factors are directed towards reducing the culpability of the offender. Thus *specific mitigating factors are ultimately derived from the ends or objectives of sentencing and must be considered as directed to securing particular sentencing ends or objectives.* [emphasis added]

96 In that light, I turn to the offence of drunk driving under s 67(1)(*b*) of the RTA.

97 I begin with the sentencing objective of *retribution*. As explained in *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [46], the concept of retribution is based on the notion that "the punishment meted out to an offender should reflect the degree of harm and culpability that has been occasioned by such conduct". Consequently, when hurt and injury has resulted from the offender's conduct (such as his drunk driving), the retributive principle will not be easily overridden and the court must attribute necessary weight to it, having regard to the degree of actual and potential harm caused.

98 The focus of the second sentencing objective – that of *prevention* – is on the protection and safety of the public through the incapacitation of dangerous or persistent offenders: *Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 at [59]. Given the relatively short imprisonment terms permissible under s 67(1)(*b*) of the RTA, the principle of prevention appears to have limited relevance in the context of this offence.

99 I turn to the third sentencing objective, which is that of *deterrence*. The aim of *specific* deterrence is to discourage a particular offender from reoffending by instilling in him the fear of the consequences of re-offending through the potential threat of re-experiencing a similar sanction as previously imposed (or perhaps even a more serious one): *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") at [21]. The offender's good character and good works might suggest that the commission of the offence is an aberration and is unlikely to reoccur. His record of good works provides reason to think that he will continue to contribute to the community rather than cause harm to it through criminal acts. As explained in *Ang Peng Tiam* at [102], such matters are mitigating insofar as they fairly allow the court to infer that the offender had acted "out of character" and that it may therefore not be necessary to impose a heavier punishment in order to specifically deter him from reoffending. Along similar lines, in the High Court of Australia's decision in *Ryan v The Queen* [2001] HCA 21 ("*Ryan*"), Gummow J held at [68] that an offender's good character "may indicate the capacity of the person to appreciate the censure inherent in the outcome of the criminal process and may suggest that repetition of the criminal conduct is unlikely".

100 But the deterrence principle has a second aspect. The purpose of *general* deterrence is to educate and deter other like-minded members of the general public by making an example of the particular offender: *Tan Fook Sum* at [18]. It is particularly relevant in the context of offences affecting public safety and public health: *Law Aik Meng* at [24(d)]. The prohibition on drunk driving under s 67(1)(*b*) of the RTA is evidently such an offence. For the reasons explained at [43]–[44] above, general deterrence ought to play a large part in determining the appropriate sentence to be imposed on a drunk driver, particularly one who has caused injury to another. In *Ang Peng Tiam*, it was noted at [103] that the

mitigating value of past contributions "will be readily displaced" if the court is satisfied that there are other sentencing considerations that override this. More specifically, "if the key sentencing objective is general deterrence, … the focus then would be on sending a clear message to others of the harsh consequences that await those who might be thinking of following in the offender's footsteps." In the circumstances, any mitigating weight afforded by a lessened need to specifically deter a drunk driver will be readily offset by the interest of general deterrence. This finds resonance in McHugh J's judgment in *Ryan*, where he opined at [33] that:

> … the *nature and circumstances of the offences* for which [the offender] is being sentenced is a countervailing factor of the utmost importance. The nature of the offences for which the [offender] was being sentenced meant that his otherwise good character could only be a small factor to be weighed in the sentencing process. [emphasis added]

101 Finally, the *rehabilitative* rationale for sentencing is to reform or alter the values of the offender such that he or she no longer desires to commit criminal acts: *Public Prosecutor v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449 at [30]. In this regard, an offender who has done good works or shown himself to be of generally good character may possess a higher potential for correction and therefore the "corrupt influence of a prison environment and the bad effects of labelling and stigmatisation" (*Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [21]) may lessen rather than promote his chances of reformation. In my judgment, in order for rehabilitative reasoning to apply, the offender must satisfy the court that the evidence of his contributions to the public is also indicative of his capacity for and willingness to change for the better. Even then, save in the case of young offenders, this will have limited weight.

Summary

102 The following principles may be extracted from the foregoing analysis:

(a) Any evidence concerning the offender's public service and contributions must be targeted at showing that *specific sentencing objectives will be satisfied* were a lighter sentence to be imposed on the offender;

(b) The fact that an offender has made past contributions to society might be a relevant mitigating factor not because it somehow reduces his culpability in relation to the present offence committed, but because it is indicative of his capacity to reform and it tempers the concern over the specific deterrence of the offender;

(c) This, however, would carry modest weight and can be displaced where other sentencing objectives assume greater importance; and

(d) Any offender who urges the court that his past record bears well on his potential for rehabilitation will have to demonstrate the connection between his record and his capacity and willingness for reform, if this is to have any bearing.

Relevance of measures taken by the SAF and disciplinary proceedings

103 I turn to the final broad issue which is the relevance of the consequences the appellant will face in his employment.

104 In the present case, the appellant claims (see [24] above), that he "would be facing disciplinary proceedings" and has "already been punished in other ways – his performance bonuses and merit increments have been withheld, and

he will suffer a likely bar from promotion for a duration" and that because of these other types of adverse consequences that he stands to face, his sentence in the present case should be moderated.

105 In *Khoo Kee Yoong v Public Prosecutor* [2002] SGDC 273, the offender, a Staff Sergeant with the Singapore Navy, was convicted of a charge of drunk driving under s 67(1)(*b*) of the RTA. He argued in mitigation that he would be subjected to SAF internal disciplinary proceedings should he be fined more than $1,000 by a civil court, which might lead to him losing his job. The district judge rejected this submission, reasoning as follows (at [9]):

> The Court was not persuaded that the accused should be fined the mandatory minimum of $1,000 simply because he would be subjected to further disciplinary proceedings which could jeopardise his job. *In pursuing a career with the Singapore Armed Forces as a regular serviceman, the accused must accept the full rigours of any disciplinary proceedings, if any, within his employment that may arise from his misconduct over and above the sentence meted by the Court. Accordingly, the accused should not be entitled to be sentenced differently on account of disciplinary proceedings which he would have to face upon being sentenced to a fine in excess of $1,000.* Any hardship occasioned to the accused and his family was brought upon by his own actions. The disciplinary proceedings cannot be the predominant factor in [the] Court's determination to limit the fine to the mandatory minimum of $1,000. On the facts, the circumstances of the case fell short of those required to qualify hardship as a factor to impose the minimum fine of $1,000. Accordingly, I imposed a fine of $1,500, in addition, to be disqualified from holding or obtaining a driving licence (for all classes) for a period of 24 months.
>
> [emphasis added]

106 In Kow Keng Siong, *Sentencing Principles in Singapore* (Academy Publishing, 2009) at pp738–742, the author draws, from his review of the authorities, the principle that "[t]he fact that the offender will be subject to disciplinary proceedings in addition to the punishment imposed by a court is

generally not a mitigating factor". By way of example, the author refers to the decision of Chao Hick Tin JC (as he then was) in *Chow Dih v Public Prosecutor* [1990] 1 SLR(R) 53, where the appellant, a doctor, was convicted of cheating his patients by deceiving them into believing that they were suffering from various diseases and therefore required treatment from him. Chao JC held at [59] that while he appreciated that following the conclusion of the case, the appellant would be dealt with professionally by the Singapore Medical Council, "a doctor who cheats his patients, like the appellant, must expect to be dealt with according to law as well as the disciplinary rules of his profession". Thus Chao JC was "unable to accept this as a mitigating factor".

107 In *Ramanathan Yogendran v Public Prosecutor* [1995] 2 SLR(R) 471, the appellant was a solicitor who was convicted of various charges involving the fabrication of evidence, criminal breach of trust, criminal intimidation and furnishing false information to a public servant. In considering the appropriate sentence to be imposed on the appellant, Yong CJ expressed his disagreement (at [125]) with a decision of the Malaysian High Court in *Lee Yew Siong v Public Prosecutor* [1973] 1 MLJ 37, where the Malaysian court had held that it "cannot ignore the fact that [the offender] will face disciplinary proceedings and the high probability that he will be struck off the roll of advocates and solicitors". Yong CJ held that this logic was "questionable" and noted that the decision had not subsequently been followed by the Malaysian courts.

108 It should be observed, however, that the authorities do not all go one way. In *Knight Glenn Jeyasingam*, the High Court noted at [27] that the offender had been suspended from employment, that disciplinary proceedings had been taken against him and his service would likely be terminated, upon which the offender would lose all his pension and other benefits "which are not

inconsiderable". And in *Yeo Kwan Wee Kenneth v Public Prosecutor* [2004] 2 SLR(R) 45, where the offender was convicted of voluntarily causing grievous hurt, the High Court took into account (at [44]) the fact that he "ha[d] been punished in other ways", given that his conviction would prevent him from serving his bond with the Republic of Singapore Air Force and he would therefore face potential legal action from his employer.

109 For clarity of analysis, I distinguish between two different sorts of arguments that emerge from the case law. The first argument is that an offender who has had certain sanctions or measures imposed on him by his employer following his misdemeanour has "already been punished" (using the appellant's language) and should therefore receive a lesser degree of (further) punishment from the court. I do not accept this argument. An employer may have any number of reasons for deciding to impose penalties on the offender, such as the detriment that the offender's conduct has had on the employer's reputation, or a decision by the employer that the offender has by his conduct demonstrated that he is not suited for a particular position or appointment. These decisions are based on organisational goals and values, and are often difficult for a court to divine or assess. More importantly, these reasons have little to do with the rationale for punishment under the criminal law – which is the preservation of morality, protection of persons, the preservation of public peace and order and the need to safeguard the state's institutions and wider interests: *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [17].

110 The second argument is that an offender should not receive punishment of a certain type or above a certain degree because he will lose his job or face disciplinary proceedings otherwise. The argument is that the imposition of a certain type or degree of punishment will lead to hardship or compromise the

offender's future in some way and that this additional hardship may and indeed should be taken into account by the sentencing court. However, this will not often bring the offender very far. Prof Ashworth accounts for the general lack of persuasiveness of such arguments in the following lucid fashion (*Sentencing and Criminal Justice* at p194):

> Is there any merit in this source of mitigation [*ie,* the effect of the crime on the offender's career]? Once courts begin to adjust sentences for collateral consequences, is this not a step towards the idea of wider social accounting which was rejected above? In many cases one can argue that these collateral consequences are a concomitant of the professional responsibility which the offender undertook, and therefore that they should not lead to a reduction in sentence because the offender surely knew the implications. Moreover, there is a discrimination argument here too. If collateral consequences were accepted as a regular mitigating factor, this would operate in favour of members of the professional classes and against 'common thieves' who would either be unemployed or working in jobs where a criminal record is no barrier. It would surely be wrong to support a principle which institutionalized discrimination between employed and unemployed offenders.

111 Whichever way one looks at it, I do not regard it as relevant to sentencing. A person who breaches the criminal law can expect to face the consequences that follow under the criminal law. Whether or not such an offender has already or may as a result suffer other professional or contractual consequences should not be relevant to the sentencing court.

Application to the facts

112 In the light of the foregoing principles, I turn to consider the appropriate sentence in this case. Given that the appellant caused injury to two persons as a result of his drunk driving, and having regard to the nature of the injuries that were caused, I would classify this as a case of moderate harm. I would also classify this as a case of medium culpability. While his BAC level was on the

lower end of the scale, his driving behaviour was dangerous. As the District Judge noted, there were clear indications that the appellant's judgment was substantially impaired (see [13] above). The appellant was a source of immense danger when he accelerated into a junction at the intersection of two busy roads in the Central Business District during peak traffic hours. In doing so, he also violated road traffic rules by beating a red light. I also note that a second charge of dangerous driving under s 64(1) of the RTA was taken into consideration for the purpose of sentencing. Amongst other things, that charge reflects the appellant's failure to conform to the traffic signal (see [5] above). In the circumstances, I am satisfied that the custodial threshold has been crossed.

113 Having considered the sentencing factors discussed above, I find that the circumstances of the offence *do not* warrant departing from this starting position. The appellant had no good reason for choosing to drive after having consumed alcohol. It appears, for all intents and purposes, that he had decided to drive home for no better reason than that it was convenient to do so, having driven to the gathering that he attended. Similar to the offender in *Edwin Suse* (at [33]), there was "nothing of an exonerating nature" in the appellant's conscious decision to drive home after drinking. Further, while the appellant may have an unblemished record of service in the SAF on account of which there may be no call for specific deterrence, I place no real weight on this because of the pressing need for general deterrence in this case. I also consider the consequences of this conviction and sentence on his SAF career to be irrelevant for the reasons that have already been set out.

114 The remaining question concerns the length of the appropriate custodial sentence that should be imposed on the appellant. I do not consider it especially helpful to analyse this by reference to the decided cases because those have not

adopted the analytical framework that I have identified. In my judgment, this being a case of moderate harm and medium culpability, and considering that the permissible sentencing range is a term of imprisonment of up to six months, the starting point in this case would be a term of imprisonment of two weeks. I base this on the indicative ranges I have set out at [78] above. Specifically, given the degree of harm caused and culpability displayed in this case, the sentencing range of up to a month as described at [78(d)] above is applicable. Within that indicative range, I consider that a term of two weeks' imprisonment is appropriate as a starting point for a case of moderate harm and medium culpability.

115 This is what the District Judge imposed in the court below. However, I do consider that mitigating value should be attributed to the appellant's payment of compensation to both victims, in the sums of $15,771.93 and $26,062.64 respectively (see [21] above). I note that the District Judge did not make any mention of this matter in his GD. Restitution is a well-established mitigating factor. The Prosecution refers to *Ong Ah Tiong v Public Prosecutor* [2004] 1 SLR(R) 587 at [27] and argues that because the appellant's payment of compensation arose out of civil suits instituted against him by the victims, this qualifies the mitigating value of his act of compensation. In my judgment, the extent to which the mitigating value of a compensatory payment is to be qualified must depend on all the circumstances. Here, it appears that orders were made with the appellant's consent. The amounts were also reasonably substantial. The overall impression one gets is that the appellant was sincerely attempting to make it up to the victims. The policy of the law should be to encourage this. I therefore consider that this should be taken into account.

Conclusion

116 In all the circumstances, I consider that the sentence of two weeks' imprisonment imposed by the District Judge should be reduced to one week. The three-year period of disqualification from driving that the District Judge ordered is to remain. I therefore allow the appeal to this extent.

Sundaresh Menon
Chief Justice

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