Yan Jun *v* Attorney-General
[2014] SGCA 60

Case Number : Civil Appeal No 142 of 2013

Decision Date : 27 November 2014

Tribunal/Court : Court of Appeal

Coram : Andrew Phang Boon Leong JA; Belinda Ang Saw Ean J; Quentin Loh J

Counsel Name(s) : The appellant in person; Khoo Boo Jin, Low Tzeh Shyian Russell and Poh Jia Yin Nicole Evangeline (Attorney-General's Chambers) for the respondent.

Parties : Yan Jun — Attorney-General

Civil Procedure – Striking Out

Civil Procedure – Limitation

Constitutional Law – Accused Person – Rights

Tort – Malicious Prosecution

Tort – Defamation – Qualified Privilege

Tort – Defamation – Publication

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2014] 1 SLR 793.]

27 November 2014 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This is an appeal by the appellant, Yan Jun ("the Appellant"), against the decision of the High Court judge ("the Judge") in Registrar's Appeal No 227 of 2013 ("RA 227/2013"). The Judge dismissed the Appellant's appeal against the decision of an assistant registrar ("the AR") in Summons No 2310 of 2013 ("SUM 2310/2013") to strike out parts of his statement of claim in Suit No 257 of 2013 ("S 257/2013") under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules").

The background facts

2 The facts pleaded by the Appellant are as follows. On the morning of 19 July 2009, the Appellant was in his flat in Simei when he had an argument with his mother-in-law, Mdm Yu Xinlan ("Mdm Yu"). Given previous instances of violence between himself and Mdm Yu, the Appellant called the police. He then carried his child into the master bedroom of the flat and waited for the police to arrive.

3 During the time he was in the bedroom, the Appellant heard Mdm Yu shouting to his wife, Mdm Liu Tian ("Mdm Liu"), that certain stove accessories had been removed from the kitchen. Upon hearing this, Mdm Liu rushed into the bedroom and hit the Appellant repeatedly and violently. The

Appellant held his child tightly and raised his arm to protect himself, but did not fight back. He then ran out of the bedroom with the child and stood in the dining room while Mdm Liu remained in the bedroom.

4 Shortly after this, two police officers arrived at the flat. The Appellant pointed to the master bedroom and stated in Mandarin, "she beat me", but he was ignored by the police officers. Instead, they went directly into the bedroom to speak to Mdm Liu. After some time, they came out of the master bedroom and continued their conversation with Mdm Liu in the kitchen.

5 The Appellant overheard Mdm Liu informing the police officers that the Appellant had hit her deliberately because he knew that an Expedited Order ("the EO"), which Mdm Liu had obtained against him on 25 June 2009, was about to expire. The Appellant also overheard one of the police officers talking to someone on the phone about whether the EO was valid on that day.

6 After Mdm Liu had spoken to the police officers, the Appellant told one of the police officers that it was his turn to speak but was told that he was under arrest for breach of the EO. The Appellant protested on the ground that the police officers had only heard one side of the story but this was to no avail. The Appellant was handcuffed and later escorted to Changi General Hospital ("CGH") for a medical examination.

7 In the treatment room at CGH, the Appellant was asked by a doctor about how he had gotten injured, to which the Appellant replied that he was beaten by his wife. The doctor then asked about the Appellant's wrongdoing to which one of the police officers answered "breach of PPO [personal protection order]". The Appellant alleges that the doctor deliberately insulted him by replying "small injury" in a loud voice. The Appellant's medical report stated that he had superficial nail excoriations on his face, neck and left hand.

8 Mdm Liu also proceeded to CGH for a medical examination. Her medical report stated that she had superficial abrasions and tenderness on the left side of her neck.

9 After his medical examination, the Appellant was taken to Bedok Police Division ("BPD") for further investigations. In the course of these investigations, the Appellant informed the Investigating Officer ("the IO") that he had gone to the Family Court on 6 July 2009, which was the return date of the EO, but that Mdm Liu had not attended court on that day. The Appellant was released on bail from BPD the next day, 20 July 2009, at about 6.30am. Approximately 21 hours had elapsed from the time of the Appellant's arrest to his release.

10 After the Appellant was released, he went again to the Family Court to check whether his wife had attended court on the return date of the EO, and was informed that she had not. This suggested that the EO was not valid when the Appellant was arrested on 19 July 2009. Therefore, on the next day, the Appellant sent an SMS to the IO about Mdm Liu's non-attendance in court. He also later wrote to BPD for an explanation and was told that the case had been passed on to one Staff Sergeant Lim Shao Liang ("SSG Lim"). On 14 September 2009, SSG Lim informed the Appellant that his case had been referred to the Attorney-General's Chambers ("AGC"). Around this time, the Appellant consulted a number of lawyers.

11 On 5 October 2009, SSG Lim informed the Appellant that, having consulted with the AGC, it had been decided that no further action was to be taken against him. On 16 and 29 October 2009 the Appellant sent emails to SSG Lim to question the validity of the EO and to inquire about the outcome of the investigations. However, he did not receive a reply.

12 Thereafter, the Appellant again consulted with lawyers but took no further steps until 16 March 2012. On that day, he sent an email to the AGC to ask about the outcome of the investigations. The AGC replied on 4 and 5 June 2012, taking the position that, in the circumstances of the case, there was a reasonable suspicion of the Appellant being concerned with an offence of a breach of the EO, even though it was subsequently discovered that the EO had been revoked by 19 July 2009. A series of emails between the Appellant and the AGC then followed before the Appellant filed S 257/2013 against the Attorney-General ("the Respondent") on 1 April 2013.

The Appellant's claim

13 In S 257/2013, the Appellant claims damages against the Respondent for wrongful arrest, false imprisonment, assault and battery, excessive use of force, malicious prosecution, abuse of process and defamation. These causes of action arise generally from the circumstances surrounding the Appellant's arrest on 19 July 2009, and his subsequent detention before he was released.

14 The cause of action in defamation, on the other hand, is based on the statements allegedly made by the doctor and the police officer at CGH during the Appellant's medical examination (see above at [7]). The Appellant states that he was defamed by the police officer when the police officer had answered "breach of PPO" when asked by the doctor about the Appellant's wrongdoing. The Appellant also states that the doctor had intentionally humiliated, and therefore defamed, him by loudly announcing that the Appellant had suffered a "small injury".

15 The Appellant claims the following as damages:

Claim	Amount	Type of Damages
Loss of Liberty	$60,000	General
	$30,000	Aggravated
Assault and Battery	$15,000	General
Assault and Battery (Humiliation)	$100,000	General
Excessive Use of Force	$10,000	General
Defamation	$5,000	General
Intentional Infliction of Emotional Distress	$100,000	General
Economic Loss	$7,135	Non-pecuniary
Malicious Prosecution, Abuse of Process, Wrongful Arrest	$900,000	Punitive (recommended)
Total	**$1,227,135**	

The claim for "economic loss" comprises the following items:

Item	Amount	Dates
Medical Treatment for Thumb Numbness	$75	25 July 2009

Consultation with Family Service Centre	$60	11, 27 August and 4 September 2009
Return to hometown in September 2009	$3,000	September 2009
Lost Earnings	$4,000	July-September 2009
Total	**$7,135**	

The proceedings below

16 On 2 May 2013, the Respondent applied to strike out the Appellant's statement of claim on the ground that the entire suit was time-barred. In the alternative, the Respondent submitted that the statement of claim did not disclose reasonable causes of action. On 3 July 2013, the AR struck out all the Appellant's claims except the claim for general and aggravated damages for loss of liberty arising from false imprisonment and the claim for punitive damages for false imprisonment. On 16 July 2013, the Appellant filed an appeal against the AR's decision in RA 227/2013.

17 The appeal was heard, and dismissed, by the Judge on 21 August 2013, with written grounds reported in *Yan Jun v Attorney-General* [2014] 1 SLR 793 ("the GD"). The Judge held (at [46]) that the Appellant's *entire suit* was time-barred under ss 24A(1) and (2) of the Limitation Act (Cap 163, 1996 Rev Ed) ("the Act"). Despite this, the Judge appeared to be of the view that the AR's decision not to strike out the Appellant's false imprisonment claim should stand (at [54]). The Judge proceeded, by way of *obiter dicta*, to hold that there were *other grounds* for striking out the Appellant's causes of action in wrongful arrest, malicious prosecution, abuse of process and defamation.

Issues before this court

18 The two broad issues before this court are as follows:

(a) Whether the Appellant's suit is time-barred under s 24A of the Act ("Issue 1").

(b) Whether there are other grounds for striking out the Appellant's statement of claim ("Issue 2").

Issue 1

The relevant statutory provisions

19 Turning first to the issue of whether the Appellant's suit is time-barred, the statutory provisions which are germane to the present appeal are ss 6 and 24A of the Act. Section 6 of the Act ("s 6") prescribes a *general* limitation period of six years for actions based on contract or tort. It reads as follows:

> **Limitation of actions of contract and tort and certain other actions**
>
> 6.—(1) *Subject to this Act*, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

(*a*) actions founded on a contract or on tort;

…

[emphasis added]

20 It should be noted that the six year limitation period under s 6 is *subject to provision(s) to the contrary* in the Act. In the context of the present appeal, an example of this is to be found in s 24A of the Act which reads as follows:

Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage

24A.—(1) This ***section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision)*** .

(2) An action to which this section applies, ***where the damages claimed consist of or include damages in respect of personal injuries*** to the plaintiff or any other person, shall not be brought after the expiration of —

(*a*) 3 years from the date on which the cause of action accrued; or

(*b*) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (*a*).

(3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —

(*a*) 6 years from the date on which the cause of action accrued; or

(*b*) 3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (*a*).

[emphasis added in bold italics]

21 The Respondent takes the position that *all* the causes of action pleaded by the Appellant are actions for "breach of duty" under s 24A(1) of the Act ("s 24A(1)"). It also contends that because the damages claimed by the Appellant include damages in respect of personal injury, a limitation period of three years applies to the *entire suit* under s 24A(2) of the Act, with the effect that it is time-barred. Conversely, the Appellant contends that s 24A(1) has no application because his pleaded causes of action fall outside the meaning of "breach of duty". He therefore states that a limitation period of six years under s 6(1)(*a*) of the Act applies instead. Before considering these arguments in greater detail, let us first consider the legislative history of s 24A(1) itself.

The legislative history of s 24A(1) in Singapore

22 Section 24A(1), in its present incarnation, was the product of amendments to the Act in 1966

and 1992, respectively. Prior to 1966, the Limitation Ordinance 1959 (Ordinance 57 of 1959) provided for a general six year limitation period for all torts, notwithstanding the nature of the cause of action pleaded or the damages sought. This state of affairs was altered by the Limitation (Amendment) Act (Act 7 of 1966) ("the 1966 amendments") which introduced a new s 6(3A) in the following terms:

> (3A) An action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made or under any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, shall not be brought after the expiration of three years from the date on which the cause of action accrued …

23 The 1966 amendments therefore had the effect of reducing the limitation period from six to three years where damages were claimed in respect of personal injury in actions for negligence, nuisance or breach of duty. The rationale for these amendments was explained by the then Minister for Law and National Development, Mr Yong Nyuk Lin ("Mr Yong"), in the Second Reading Speech (see *Singapore Parliamentary Debates, Official Report* (21 April 1966) vol 25 at col 79), as follows:

> The Bill seeks to amend the Limitation Ordinance, 1959, to reduce the period of limitation for damages for personal injuries from six years to three years. *This will bring the law in line with the law in England where the period of limitation was fixed at three years* by the Law Reform (Limitation of Actions) Act, 1954.
>
> The *effect of the amendment will be that in general actions for personal injuries, arising, for example, from motor-car accidents, may only be brought within three years of the accident*. It is desirable that such actions should be heard as soon as possible after the accident, as, if the action is instituted, say, after four or five years, it would be difficult for witnesses to testify about the accident with any degree of accuracy. The Act will therefore prevent the institution of stale proceedings. Police investigation papers are normally destroyed by the Police two or three years after an accident and if actions are brought after that, police witnesses will be unable to refresh their memories from statements or plans made by them soon after the accident.
>
> It is felt that the reduction of the limitation period to three years would cause no hardship to third parties. Injuries caused by motor accidents normally become obvious immediately after the accident and the wide publicity given to proceedings relating to accidents in the local Press and the availability of lawyers make it possible for any third party to take advice and action within a reasonably short time.
>
> [emphasis added]

24 The Act was amended again in 1992, by way of the Limitation (Amendment) Act (Act 22 of 1992) ("the 1992 amendments"). The 1992 amendments introduced, *inter alia*, the present s 24A. In 1992, Parliament had intended to address the perceived injustice created by the then existing limitation periods where the damage suffered by the plaintiff was *latent* and not readily discoverable. As the then Minister for Law, Prof S Jayakumar ("Prof Jayakumar") explained during the Second Reading of the bill (see *Singapore Parliamentary Debates, Official Report* (29 May 1992) vol 60 at cols 31–32)

> Sir, under the existing law, the limitation periods are as follows:
>
> (1) In the case of personal injury, it is three years from the date the damage occurred; and

(2) In non-personal injury cases, it is six years from the date the damage occurred.

This amendment is necessary because under the present law, the limitation period for legal actions runs from the time the damage actually occurred even if the plaintiff did not know or could not reasonably have known about the damage. This can, of course, cause injustice and problems, especially in building construction cases where latent defects may not be discoverable until after the limitation period has expired. In such cases, the plaintiff, or the aggrieved party, is then left without any legal recourse.

…

Sir, the Bill before us amends the Limitation Act along the lines of the United Kingdom Limitation Act 1980 and the United Kingdom Latent Damage Act 1986. What it does is to extend the limitation periods for personal and non-personal injury claims by providing an alternative starting date for the limitation period, ie, the date the aggrieved person has knowledge of the damage. The limitation period would be computed from the date that expires later. It also seeks to balance the interest of potential defendants by providing that no action may be brought after 15 years from the date of the breach of duty even though the damage or injury has not and could not be discovered.

[emphasis added]

25 It will be evident that the parliamentary material, *when read alone*, sheds little light on what is meant by the phrase "breach of duty" under s 24A(1). In particular, it is unclear whether the phrase ought to be read widely, as including *all* torts and breaches of contract. This difficulty is exacerbated by the fact that there has been a *dearth* of authority where the phrase has received judicial interpretation by the Singapore courts. It should be noted, however, that there is, and has been, considerable identification between the Singapore limitation statutes and the English ones. In this regard, both the 1966 and 1992 amendments were intended by Parliament to update the Singapore position in the light of common law and statutory developments in England. Let us therefore now consider what these developments were.

Developments in the English law

26 Prior to 1954, s 2 of the Limitation Act 1939 (c 21) (UK) ("the 1939 UK Act") provided for a general limitation period of six years for actions founded on contract and tort. If, however, the defendant was a public authority, then s 21 of the 1939 UK Act, read with s 1 of the Public Authorities Protection Act 1893 (c 61) (UK) ("PAPA"), applied and the limitation period was one year instead.

27 In 1944, a committee chaired by Sir Walter Monckton ("the Monckton Committee") recommended that the limitation period should be three years for actions for personal injuries, whether the defendant was a public authority or not (see *The Final Report of the Departmental Committee on Alternative Remedies* (Cmd 6860) at paras 107–108). In the Monckton Committee's view, the general limitation period of six years was too long a period of delay before commencing an action while the limitation period of one year for public authorities was too short.

28 In January 1948, a committee chaired by Lord Justice Tucker ("the Tucker Committee") was constituted to further consider reforming the said Acts. Their terms of reference included the following:

(1) whether the [PAPA], as amended in its application to England and Wales by s 21 of the [the 1939 UK Act]…, should be further amended or repealed;

…

(3) whether any alteration should be made in the time limits prescribed by [s 2 of the 1939 UK Act], for the bringing of certain actions in England and Wales.

29 The findings and recommendations of the Tucker Committee were published on 30 July 1949 in the *Report of the Committee on the Limitation of Actions* (Cmd 7740) ("the Tucker Report"). Three of the Tucker Committee's recommendations are of note. First, it recommended the repeal of the PAPA, so that the limitation period which applied to private litigants would similarly apply to the Crown. Secondly, it recommended that the general limitation for actions in contract and tort remain at six years. Thirdly, *and most pertinently for the purpose of the present proceedings*, it recommended that the limitation period for actions for personal injuries be reduced to two years. In this regard, the Tucker Committee opined as follows (see the Tucker Report at paras 22–23):

22 We do, however, recommend a change in the period of limitation for actions for personal injuries. These, whether founded on contract or tort, ought generally to be brought within two years of the accrual of the cause of action, having regard to the desirability of such actions being brought to trial quickly, whilst evidence is fresh in the minds of the parties and witnesses …

23 We consider that the period of limitation we have recommended should apply to all actions for personal injuries, whether the defendant is a public authority or not. We do not think it is necessary for us to define "personal injuries", although this may possibly be necessary if legislative effect is given to our recommendations. ***We wish, however, to make it clear that we do not include in that category actions for trespass to the person, false imprisonment, malicious prosecution, or defamation of character, but we do include such actions as claims for negligence against doctors.***

[emphasis added in bold italics]

The Tucker Committee, however, did not elaborate as to why these torts should not be subject to the shorter limitation period it had recommended for actions for personal injuries more generally.

30 On the basis of the recommendations of the Tucker Committee, the Law Reform (Limitation of Actions, etc) Act 1954 (c 36) (UK) ("the 1954 UK Act") was enacted. The material portions of the new s 2(1) read as follows:

Provided that, in the case of *actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or such provision)* where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years. [emphasis added]

31 At the second reading of the amendment Bill, the proposer of the Bill, Mr John Peyton explained the nature of the amendments in the following terms (see *Parliamentary Debates (Hansard) – House of Commons* (4 December 1953) vol 521 at cols 1544 and 1546):

In its main provisions the Bill *follows precisely the recommendations of the committee which sat*

under the chairmanship of the then Lord Justice Tucker. There is *only one comparatively minor point* upon which the provisions vary from the recommendations of the Tucker Committee ...

…

The object of Clause 2 is to alter the period within which action for damages can be brought in cases of negligence, nuisance and breach of duty. All such actions where damages consist of personal injuries must, under the provisions of the Bill, be brought within three years, with very minor exceptions, regardless of who the defendant is …

[emphasis added]

This "minor point" was to substitute a limitation period of three years – which was recommended by the Monckton Committee – for the two recommended by the Tucker Report in actions for personal injuries.

32 Yet, none of the speeches in the House of Commons and the House of Lords expressly referred to the Tucker Committee's recommendation that the shorter limitation period for personal injury claims should *not* apply to actions for trespass to the person, false imprisonment, malicious prosecution and defamation. Rather, *some speeches appeared to assume that the shorter limitation period was to apply to all actions for personal injuries, notwithstanding the precise cause of action that was pleaded*. For example, Mr Graham Page, member for Crosby, observed in the House of Commons as follows (see *Parliamentary Debates (Hansard) – House of Commons* (4 December 1953) vol 521 at col 1558) :

[Clause 2] reduces the period of limitation to three years only in the case of personal injury. The period of limitation differs not according to the status of the defendant, whether it be a public authority or a private individual; *not according to the cause of action*, but merely according to the damage suffered … [emphasis added]

In introducing the amending bill in the House of Lords, Viscount Hailsham similarly stated as follows (see *Parliamentary Debates (Hansard) – House of Lords* (20 May 1954) vol 187 at col 812):

The second main object of the Bill is to reduce from six years to three years the period of limitation for actions in which a claim is made for damages for personal injuries … *It may at first seem to lawyers a little arbitrary to create a special category of actions described as actions for damages for personal injuries when the cause of action, in many cases, is known to differ in its technical nature*, but it is a practical measure which has the support of the Tucker and the Monckton Committees and is, in fact, probably a condition of achieving the object of extending the period of limitation for public authorities. [emphasis added]

33 Section 2(1) of the 1954 UK Act arose for interpretation by the English Court of Appeal in *Letang v Cooper* [1965] 1 QB 232 ("*Letang*"). The plaintiff there was injured when the defendant drove over her legs while she was sunbathing in a carpark. She sued in negligence and trespass to the person but only issued the writ four years after the accident. The trial judge held that the defendant was negligent on the basis of an unintentional trespass to the plaintiff's person. He also interpreted the phrase "breach of duty" under s 2(1) of the 1954 UK Act as not including an action for trespass to the person. In the event, the relevant limitation period was held to be six years and the plaintiff's action was therefore not time-barred.

34 The Court of Appeal allowed the defendant's appeal. Lord Denning MR held (at 240) that as the

injury was not inflicted by the defendant intentionally, the plaintiff's only cause of action lay in negligence and not trespass to the person. This cause of action was clearly time-barred under s 2(1) of the 1954 UK Act. Pertinently, however, Lord Denning went on to observe that, *even if the plaintiff did have a cause of action in trespass to the person, it too would have been time-barred as it was an action for "breach of duty"*.

35 Lord Denning gave several reasons for construing the phrase "breach of duty" in this manner. He noted at the outset that the Tucker Report had recommended excluding the torts of trespass to the person, false imprisonment, malicious prosecution and defamation from the ambit of the shorter limitation period. However, he was of the view that this did not militate in favour of reading the phrase "breach of duty" as not including these torts. Lord Denning explained thus (at 240–241):

> I think the text-writers have been in error in being influenced by the recommendations of the [Tucker Committee] … You must interpret the words of Parliament as they stand, without too much regard to the recommendations of the committee … In this very case, Parliament did not reduce the period to two years. It made it three years. It did not make any exception of "trespass to the person" or the rest. *It used words of general import; and it is those words which we have to construe, without reference to the recommendations of the Committee*. [emphasis added]

36 In Lord Denning's view, the phrase "breach of duty" was wide enough to encompass all torts. He reasoned, in this regard, that (at 241):

> *Our whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way that is forbidden by law*. Negligence is a breach of such a duty. So is nuisance. So is trespass to the person. So is false imprisonment, malicious prosecution or defamation of character. [emphasis added]

37 Finally, Lord Denning noted (at 241) that the phrase "breach of duty" had been given a similarly wide construction by Lord Greene MR in the English Court of Appeal decision of *Billings v Reed* [1945] KB 11 ("*Billings*") and by Adam J in the Victoria decision of *Kruber v Grzesiak* [1963] 2 VR 621. The latter of the cases just mentioned concerned the interpretation of the Victorian limitation legislation which was in identical terms to s 2(1) of the English Act.

38 Between the time the 1954 UK Act was passed and *Letang* was decided, the English legislation was amended again by way of the Limitation Act 1963 (c 47) (UK) ("the 1963 UK Act"). These amendments were intended to ameliorate the harshness of the effect of the House of Lords decision in *Cartledge v E Jopling & Sons Ltd* [1963] AC 758 ("*Cartledge*"). In *Cartledge*, the plaintiff steel workers had been exposed to silica dust for periods between 1939 to 1950. By 1950, at the latest, each of the plaintiffs had contracted pneumoconiosis but this was not diagnosed until sometime between 1950 and 1955. The plaintiffs commenced their action in 1956.

39 The court in *Cartledge* held that the plaintiffs' causes of action accrued when more than negligible damage occurred, even though the injury was unknown to, and could not be discovered by, the plaintiffs. Hence, the plaintiffs' actions were time-barred, the six year limitation period having expired in 1950 by the latest. At the same time, all the judgments delivered by the court expressed concern about the harshness of the decision which they felt compelled to arrive at under the 1939 UK Act and called for legislative reform in that regard. Further, as Lord Pearce noted (at 777), the situation was exacerbated by the 1954 UK Act which (it will be recalled) had reduced the limitation period in personal injury cases to three years.

40 The 1963 UK Act was enacted shortly after the decision in *Cartledge*. Section 1 of the Act permitted the extension of the limitation period in cases of *latent damage*, provided the following requirements set out in the section were met:

> **1 Extension of time-limit for certain actions.**
>
> (1) Section 2(1) of the Limitation Act 1939 (which, in the case of certain actions, imposes a time-limit of three years for bringing the action) shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which —
>
> (a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section, and
>
> (b) the requirements of subsection (3) of this section are fulfilled.
>
> (2) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.
>
> (3) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which —
>
> (a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period, and
>
> (b) in either case, was a date not earlier than twelve months before the date on which the action was brought.

The 1963 UK Act therefore provided for an *alternative* limitation period of one year that ran from the date the plaintiff came to know of the facts giving rise to his cause of action for personal injury, in cases where the injury he suffered was latent.

41 The 1963 UK Act was further amended in 1971 and 1975 *vide* the Law Reform (Miscellaneous Provisions) Act 1971 (c 43) (UK) and the Limitation Act 1975 (c 54) (UK) ("the 1975 UK Act"), respectively. In summary, these amendments had the effect of, respectively, extending the alternative limitation period from one year to three in cases of latent damage and clarifying the concept of the knowledge required by the plaintiff to commence his action.

42 In 1980, the English Parliament sought to consolidate all the interim legislation passed since 1939 by enacting the Limitation Act 1980 (c 58) (UK) ("the 1980 UK Act"). Section 11 of the 1980 UK Act is the most germane in the context of the present proceedings and it reads as follows:

> **11 Special time limit for actions in respect of personal injuries**
>
> (1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or

independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

…

(4) Except where subsection (5) below applies, the period applicable is three years from –

(a) the date on which the cause of action accrued; or

(b) the date of knowledge (if later) of the person injured.

43 It is also pertinent to note that s 33 of the 1980 UK Act confers upon the court discretion to extend the limitation period in cases where s 11 applies. It reads as follows:

33 Discretionary exclusion of time limit for actions in respect of personal injuries or death

(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which –

(a) the provisions of section 11 … of this Act prejudice the plaintiff or any person whom he represents; and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents;

the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

44 The new s 11 arose for interpretation by the House of Lords in *Stubbings v Webb* [1993] AC 498 ("*Stubbings*"). The plaintiff in *Stubbings* was the victim of sexual abuse by her stepfather and stepbrother during her childhood. She suffered psychological disorders and mental illness as a result. Although the plaintiff had attained the age of the majority in 1975, her writ was only issued in 1987. She attributed this delay to the fact that she had only come to realise that the abuse was causative of her injuries after consulting with a psychiatrist in September 1984. The issue, therefore, was whether the plaintiff's action for deliberate assault was an action for "breach of duty". If it was, then the limitation period would have been three years from the date she realised that her injuries were significant and attributable to the defendants' acts.

45 In *Stubbings*, the House *unanimously declined* to follow the interpretation of the words "breach of duty" advanced in *Letang* and held that the plaintiff's claim based on assault did *not* fall within the meaning of "breach of duty". Rather, the phrase was construed to mean *breach of a duty of care*. It followed that a non-extendable limitation period of six years from the date the plaintiff's cause of action accrued applied and her claims were accordingly time-barred.

46 In arriving at this conclusion, Lord Griffiths, with whom the other members of the court agreed, placed much reliance on the recommendations made by the Tucker Committee, noting (at 507) that:

But I cannot agree that the words "breach of duty" have the effect of including within the scope of the section all actions in which damages for personal injuries are claimed which is the other ground upon which the Court of Appeal decided *Letang v. Cooper*. If that had been the intention of the draftsman it would have been easy enough to say so in the section. *On the contrary the*

draftsman has used words of limitation; he has limited the section to actions for negligence, nuisance and breach of duty and the reason he did so was to give effect to the recommendation of the Tucker Committee that the three-year period should not apply to a number of causes of action in which damages for personal injury might be claimed namely damages for trespass to the person, false imprisonment, malicious prosecution or defamation. There can be no doubt that rape and indecent assault fell within the category of trespass to the person.

Lord Denning M.R. in *Letang v. Cooper* [1965] 1 Q.B. 232, 240 was not prepared to assume that Parliament did intend to give effect to the Tucker Committee's recommendations, but we can now look at Hansard and can see that it was the express intention of Parliament to do so…

[emphasis added]

In so far as Lord Griffith purported to rely on the UK *Hansard*, he referred to that part of Mr John Peyton's speech in the House of Commons, which we set out above at [31].

47 Lord Griffiths went on to express doubt as to whether the phrase "breach of duty" could properly bear the meaning attributed to it by the Court of Appeal in *Letang*. He stated as follows (at 508):

Even without reference to Hansard I should not myself have construed breach of duty as including a deliberate assault. The phrase lying in juxtaposition with negligence and nuisance carries with it the implication of a breach of duty of care not to cause personal injury, rather than an obligation not to infringe any legal right of another person. If I invite a lady to my house one would naturally think of a duty to take care that the house is safe but would one really be thinking of a duty not to rape her? But, however this may be, the terms in which this Bill was introduced to my mind make it clear beyond peradventure that the intention was to give effect to the Tucker recommendation that the limitation period in respect of trespass to the person was not to be reduced to three years but should remain at six years. The language of section 2(1) of the Act of 1954 is in my view apt to give effect to that intention, and cases of deliberate assault such as we are concerned with in this case are not actions for breach of duty within the meaning of section 2(1) of the Act of 1954.

48 Lord Griffiths also did not think that by passing the 1975 UK Act and the 1980 UK Act in the same language, Parliament had endorsed the interpretation accorded to the phrase "breach of duty" in *Letang*. He noted that the 1963 UK Act, which had preceded *Letang*, was intended to address the problem posed by the insidious onset of industrial disease, which arose in *Cartledge*. The 1975 UK Act was passed to cure the imperfections of the 1963 UK Act and the 1980 UK Act merely re-enacted that part of the 1975 UK Act. In the final analysis, Lord Griffiths held that as the language of the 1954 UK Act was carried without alteration into the 1975 UK Act, and then into s 11(1) of the 1980 UK Act, it should bear the same meaning as it had under the 1954 UK Act.

49 In *A v Hoare* [2008] 1 AC 844 ("*Hoare*"), the House of Lords had the opportunity to revisit its decision in *Stubbings*. Having done so, the House unanimously decided to *depart* from it. The plaintiff in *Hoare* was the victim of an attempted rape by the defendant in 1998. The defendant was convicted and sentenced to life imprisonment. The plaintiff, however, did not commence an action until December of 2004. In fact, she had only done so after the defendant had won £7,000,000 in a lottery, thus making him a party worth suing.

50 In *Hoare*, Lord Hoffmann, who delivered the leading judgment, *cautioned* against placing *undue reliance* on *the recommendations of the Tucker Committee* in construing the phrase "breach of

duty". He first noted (at [4] and [6]) that:

> There are minor puzzles about why malicious prosecution or defamation of character were thought capable of causing personal injury or why doctors were singled out for mention, but the committee certainly seems to have intended to exclude actions for trespass to the person from their proposal. They did not explain why. The reason they gave for adopting a short period for personal injury claims ("the desirability of such actions being brought to trial quickly, whilst evidence is fresh in the minds of the parties and witnesses": para 22) would seem equally applicable to cases in which the cause of action is trespass. Perhaps they had in mind only intentionally inflicted injuries and thought that a defendant who caused deliberate injury should not have the benefit of a short limitation period.
>
> …
>
> It will be seen that in defining the actions to which the three-year period was to apply, Parliament adopted neither the simple concept of an action for personal injury (for which, as the committee had suggested, the Act provided a definition) nor the specific exclusions mentioned by the Tucker Committee, but spoke of "actions for damages for negligence, nuisance or breach of duty … where the damages claimed … consist of or include damages in respect of personal injuries".

In this regard, Lord Hoffmann observed that the language used by the UK Parliament was not new (at [7]). Rather, it had previously been judicially interpreted in *Billings* as having a *wide meaning* which included the tort of trespass to the person (at [8]–[9]).

51 Lord Hoffmann also found support for a wide interpretation of the phrase "breach of duty" from the legislative amendments in 1975 and 1980. He explained thus (at [14] and [16]):

> …*When the 1954 Act was passed, it could have been argued that the exclusion of intentionally inflicted injuries reflected a moral policy of denying the shorter limitation period to an intentional wrongdoer.* Such an argument did not find favour in *Kruber v Grzesiak* [1963] VR 621 or *Letang v Cooper* [1965] 1 QB 232, but I should have thought that, given the terms of the Tucker Committee Report and the obscurity of the parliamentary language, it was seriously arguable. But there could be *no moral or other ground for denying to a victim of intentional injury the more favourable limitation treatment introduced by the 1975 Act for victims of injuries caused by negligence*. The inference I would draw is that in using the same form of words in the 1975 Act, Parliament must have intended them to bear the meaning which they had been given in the uniform line of authority in England and Australia to which I have referred.
>
> …
>
> There is a further indication to the same effect in the 20th Report of the Law Reform Committee on Limitation of Actions (Cmnd 5630) which was published in May 1974 and to which the 1975 Act gave effect. It is plain from that report that its members thought they were dealing generally with personal injury actions: see, for example, the summary of recommendations in para 69. There is no discussion of an exclusion of intentionally inflicted injuries from the benefit of the proposed reforms.
>
> [emphasis added]

To this end, Lord Hoffmann criticised *Stubbings* as having been decided as if the 1954 UK Act had just

been enacted (at [17]). Lord Hoffmann disagreed with Lord Griffiths's characterisation of the 1963 and 1975 amendments as being to "meet the problem of the insidious onset of industrial disease" (see *Stubbings* at 506). He opined, instead, that the amendments were intended to apply to cases of personal injuries more generally (at [18]–[19]).

Meaning of "breach of duty" under s 24A of the Act

52 With the foregoing as background, let us turn to consider the meaning of the phrase "breach of duty" under s 24A(1). In this regard, the Judge followed *Letang* and held that the phrase was wide enough to encompass all torts, and, therefore, all the causes of action pleaded by the Appellant. The Judge also noted that *Letang* had been approved by the House of Lords in *Hoare*.

53 Before this court, the Appellant first contends that the Judge's interpretation of the phrase was incorrect because the Tucker Committee had excluded the torts of trespass to the person, malicious prosecution, false imprisonment and defamation from the shorter limitation period they had recommended for personal injury actions. Presumably, what the Appellant means is that this would entail this court reading the phrase "breach of duty" under s 24A(1) as not including these torts.

54 In this regard, the Appellant's contention is a *superficially* attractive one. On a broad level at least, the 1954 UK Act, which introduced the phrase "breach of duty", was passed on the back of the Tucker Report which had recommended excluding these torts from the shorter limitation period they had recommended for personal injury actions. Furthermore, by *specifically including* the words "negligence" and "nuisance" before the phrase, it is at least arguable that the UK Parliament, and *a fortiori* the Singapore Parliament, could not have intended "breach of duty" to refer to all torts. Otherwise, the words "negligence" and "nuisance" would be rendered *superfluous*.

55 On the *other hand*, there are considerable difficulties with the foregoing view, which suggest that the Appellant's reliance on the Tucker Report is *misplaced*. For a start, as Lord Hoffmann pointed out in *Hoare*, the UK Parliament's use of the phrase "breach of duty" was not traceable to anything that was stated in the Tucker Report. Rather, as noted above at [32], the speeches in the English parliamentary debates seem to suggest that the three year limitation period was intended to apply to actions for damages for personal injuries more generally, without stating the causes of action to which this was, or was not, to apply.

56 More pertinently, perhaps, the issue before this court is *not* the interpretation of the English limitation legislation in 1954, *but the interpretation of s 24A(1) as enacted by the Singapore Parliament in 1966 and as subsequently amended in 1992*. Counsel for the Respondent, Mr Khoo Boo Jin ("Mr Khoo"), submits that, when the Singapore Parliament passed the 1966 amendments, it did so against the backdrop of the interpretation given to the phrase "breach of duty" in *Letang*. By retaining the phrase, Mr Khoo argues that the Singapore Parliament must have intended to endorse that interpretation.

57 In our judgment, there is force in Mr Khoo's submission. In this regard, it is a canon of statutory interpretation that where the legislature re-enacts a statute in words that have received interpretation by a superior court, it intends those words to bear the meaning which the court has given to them (see, for example, the English Court of Appeal in Chancery decision of *Ex Parte Campbell. In re Cathcart* (1870) LR 5 Ch 703 at 706). This canon *also* applies where the provisions under consideration have been construed by a competent court in a *foreign jurisdiction* (see, for example, the High Court of Australia decision of *National Phonograph Co of Australia Ltd v Menck* (1908) 7 CLR 481 at 529).

58 Yet, to the extent that this canon is premised on the *legal fiction* that the legislature is presumed to scrutinise all judicial decisions, it *must be* applied with *the requisite circumspection*. Moreover, it *must yield to actual legislative intent to the contrary* under the *purposive approach* that is *mandated* by s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed). As V K Rajah JA observed in the Singapore High Court decision of *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [41]:

> Section 9A(1) of the Interpretation Act requires the construction of written law to promote the purpose or object underlying the statute. In fact, it *mandates* that a construction promoting legislative purpose be preferred over one that does not promote such purpose or object: see Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 154. ***Accordingly, any common law principle of interpretation, such as the plain meaning rule and the strict construction rule, must yield to the purposive interpretation approach stipulated by s 9A(1) of the Interpretation Act.*** *All* written law (penal or otherwise) must be interpreted purposively. ***Other common law principles come into play only when their application coincides with the purpose underlying the written law in question, or alternatively, when ambiguity in that written law persists even after an attempt at purposive interpretation has been properly made.*** [emphasis in italics in original; emphasis added in bold italics]

59 Bearing Rajah JA's observations in mind, we are of the view that the canon referred to above at [57] *can* be properly applied in the case before us. As we have already noted above at [23], it was Parliament's intention in passing the 1966 amendments to align the law in Singapore with that in England. Furthermore, the then Minister for Law and National Development, Mr Yong, explained that the thrust of the amendments was to shorten the limitation period to three years in "general actions for personal injuries", without drawing a distinction between different causes of action. Although the Minister referred to motor-accident cases, it is evident that he did so by way of illustration only. The foregoing analysis coheres with the wide interpretation given to the phrase "breach of duty" in *Letang*. However, it is acknowledged that an argument could be made to the effect that the Singapore Parliament might not possibly have been aware of *Letang*. That having been said, this is unlikely to have been the case. The decision itself was handed down on 15 June *1964*, and was reported in [1964] 3 WLR 573 (later in the Official Law Reports (Queen's Bench Series) as noted above (at [33])). It was also noted contemporaneously in at least two leading journals by two very distinguished authors (see J A Jolowicz, "Forms of Action – Causes of Action – Trespass and Negligence" [1964] CLJ 200 and Gerald Dworkin, "Trespass and Negligence – A Further Attempt to Bury the Forms of Action" (1965) 28 MLR 92). Be that as it may, it could not have been the case that, by the time the *1992* amendments were enacted, the Singapore Parliament was not aware of the decision in (as well as legal implications of) *Letang*. And it is to these last-mentioned amendments that our attention must now turn.

60 As just mentioned, the *1992* amendments in the *Singapore* context are also apposite in this regard. As noted earlier, the 1992 amendments were directed at the problem of latent damage and they followed a line of legislative and common law developments in England. At the Second Reading stage, Prof Jayakumar made express reference to these common law developments. By 1992, therefore, it is inconceivable that Parliament was unaware of the interpretation accorded to the phrase "breach of duty" by *Letang*. Moreover, in cases of latent damage, we do not, *as a matter of policy*, see why a different limitation period should apply based on whether or not the damage was caused by an intentional or unintentional tort, or, for that matter, a breach of contract. Cases such as *Stubbings* and *Hoare* demonstrate that latent damage is just as much an issue in the case of intentional torts. Indeed, in explaining the effect of the 1992 amendments, Prof Jayakumar did not distinguish between different causes of action. Instead, he spoke in *general terms* and distinguished between personal injury and non-personal injury cases.

61 In our judgment, a *purposive interpretation* of s 24A(1) would entail reading the phrase "breach of duty" as *encompassing all torts*.

62 The Appellant's second argument was that the tort of false imprisonment is a strict liability tort and therefore not based on any "breach of duty". In our judgment, this argument is untenable. We agree with the Judge's observation (see the GD at [40]) that there is *no dichotomy between torts of strict and fault-based liability under s 24A*. It is, first and foremost, plain from the language of s 24A(1) that it applies to breaches of contractual duties, in which case liability would be strict. There is also *nothing* in the both the English and local legislative history which suggests that Parliament had intended for such a dichotomy to exist. Instead, as we have already explained, it is more likely that Parliament had intended that the phrase "breach of duty" to be read *widely*, and therefore encompassing *all torts and breaches of contract*.

63 The Appellant's final argument was that his causes of actions in tort do not concern a "breach of duty" as the police officers did not owe him any duty when arresting him. With respect, this argument is flawed for the simple reason that *if the police officers did not owe the Appellant any duty at all, the Appellant would not have had a cause of action against the Respondent in tort in the first place*. As Lord Denning observed in *Letang* (at 241), "[o]ur whole law of tort today proceeds on the footing that there is a duty owed by every man not to injure his neighbour in a way forbidden by law". The fact that the police officers had committed the alleged torts in the proper discharge of a public duty would only be relevant to the issue of whether they had *breached* the duties which they owed to the Appellant and *not* to the issue of whether the action is one for a "breach of duty".

64 In the circumstances, we find that each of the causes of action pleaded by the Appellant were in respect of a "breach of duty" under s 24A(1).

Do the damages claimed by the Appellant consist of or include damages in respect of personal injuries?

65 Having found that each of the causes of action pleaded by the Appellant were in respect of a breach of duty, the Judge held that because the Appellant's *suit included a claim for damages for personal injuries, a limitation period of three years applied to the entire suit* under s 24A(2) of the Act ("s 24A(2)") (see the GD at [43]–[46]). To recapitulate, s 24A(2) reads as follows:

> (2) *An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person*, shall not be brought after the expiration of —
>
> (*a*) 3 years from the date on which the cause of action accrued; or
>
> (*b*) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (*a*).
>
> [emphasis added]

66 In this regard, the Judge cited the English Court of Appeal decision of *Bennett v Greenland Houchen & Co (A Firm)* [1998] PNLR 458 ("*Bennett*") as authority for his interpretation of s 24A(2). In *Bennett*, the plaintiff sued his previous solicitors for breach of contract and negligence for mishandling earlier litigation. He claimed damages for clinical depression, as well as for financial loss, because his

employability had become impaired as a result of his depression. Pertinently, however, the suit was commenced after the three year limitation period for personal injuries actions under s 11 of the 1980 UK Act had expired. To avoid the problem of limitation posed in this last-mentioned regard, the plaintiff argued that his claim was really one for economic loss and that the claim for damages for clinical depression was peripheral to this.

67 This argument was not accepted by the court which held that, because the plaintiff's action included a claim for damages for personal injury, a limitation period of three years applied and the entire action was time-barred. Both Otton and Peter Gibson LJJ reasoned that the width of the language used under s 11 of the 1980 UK Act meant that the section applied not only when the damages claimed *consisted of* damages for personal injury, but also when they *included* such damages.

68 To this end, *Bennett* purported to follow a line of authority previously established in *Howe v David Brown Tractors (Retail) Ltd* [1991] 4 All ER 30 ("*Howe*") and *Walkin v South Manchester Health Authority* [1995] 1 WLR 1543 ("*Walkin*"). In *Howe*, the plaintiff was a farmer and was in partnership with his father. He was subsequently injured while operating machinery supplied by the defendant. His writ was filed outside the three year limitation period and a defence based on limitation was raised by the defendant. The plaintiff then applied to join his father or the partnership as a co-plaintiff. To avoid the shorter limitation period for personal injuries actions, the partnership framed its claim as one for economic loss, being the additional cost of buying an automatic car and a modified tractor for the plaintiff's use, the cost of additional crop irrigation equipment, the cost of engaging contractors to carry out crop-spraying when the plaintiff was unable to do so, and loss of profits.

69 The English Court of Appeal held that the partnership's claim was for damages in respect of personal injury and was therefore also time-barred. In coming to this conclusion, Stuart-Smith LJ reasoned thus (at 36):

> If one asks the question: 'What is the firm's action all about?' the answer is that it is a claim for damages consisting of loss of profit caused by breach of contract or negligence on the part of the defendant, resulting from the personal injury to the plaintiff … It is the supply of a dangerous machine which constitutes the breach of duty in tort to the plaintiff and causes his personal injury and pecuniary loss resulting from such injury. It is the supply of the dangerous machine which constitutes the breach of contractual duty owed to the firm to supply a machine of merchantable quality and fit for its purpose; this breach of duty only causes financial loss to the firm because of the loss resulting from the personal injury to the plaintiff. *In my judgment the words 'in respect of' are wide enough to embrace such a claim* … [emphasis added]

70 Nicholls LJ, who agreed that the partnership's claim was for damages resulting from the personal injuries, further observed that (at 40-41):

> If [a] patient suffers physical injury as a result of negligent treatment by his doctor or dentist, he may bring an action in negligence or for breach of contract. The damages recoverable will include general damages in respect of the physical injury and pain and suffering. They will also include damages for financial loss resulting from the physical injury, such as loss of future earnings. In such a case the claim for financial loss is as much a claim for 'damages in respect of personal injuries' as is the claim for damages in respect of the physical injury itself. *The plaintiff could not step outside the three-year limitation period prescribed by s 11 by abandoning any claim for damages in respect of the physical injury and claiming only damages in respect of his loss of earnings*. [emphasis added]

71 In *Walkin*, the plaintiff became pregnant after a sterilisation procedure she had undergone was performed negligently. She sued for damages for the costs of raising the child and only issued her writ outside the three year limitation period. Having found that the unwanted pregnancy was a "personal injury" suffered by the plaintiff, the English Court of Appeal held that her claim was time-barred.

72 Auld LJ held (at 1551) that the question of whether an action was for damages in respect of personal injury was "one of substance, not a matter of pleading". He also disagreed (at 1549) with the view that an unwanted pregnancy gave rise to two separate causes of action, one for pre-natal pain and suffering and the other for post-natal economic loss. Instead, he was of the view that both claims arose from the same cause of action. On the facts, Auld LJ found that the negligence had caused the unwanted pregnancy which gave rise to the claim for damages for the costs of raising the child.

73 Neill LJ agreed with Auld LJ's view that an unwanted pregnancy did not give rise to two separate causes of action. He found that the claim for the economic costs of raising the child could not be separated from the claim for the personal injury. In this regard, Neill LJ echoed Nicholls LJ's view in *Howe* (see above at [70]) that the plaintiff could not step outside the three year limitation by abandoning any claim in respect of the physical injury and only claiming damages in respect of the costs of raising the child (at 1555–1556).

7 4 *Bennett* and the line of cases preceding it were considered by Singer J in the English High Court decision of *Oates v Harte Reade & Co* [1999] PNLR 763 ("*Oates*"). The plaintiff in that case sued solicitors who had previously acted for her in matrimonial proceedings. The plaintiff alleged she had lost her home and had suffered from stress and anxiety as a result of the defendant's negligence. The defendant applied to strike out the claim on the ground that it included damages in respect of personal injury and that it was commenced after the three year limitation period had expired. The plaintiff then applied to amend her statement of claim so as to abandon the portion claiming damages for stress and anxiety. A Master allowed the plaintiff's amendment at first instance and the defendant appealed.

75 On appeal, Singer J followed *Bennett* and held that as the plaintiff's claim, in its original form, *included* a prayer for damages for personal injuries, the *entire claim* was subject to a three year limitation period under s 11 of the 1980 UK Act. Singer J proceeded to consider whether the plaintiff should be allowed to amend her statement of claim to abandon the prayer for damages for stress and anxiety under O 20 r 5(1) and (2) of the UK Rules of the Supreme Court ("the UK RSC") which read as follows:

> (1) …[T]he Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
>
> (2) Where an application to the Court for leave to make the amendment mentioned in paragraph … (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.
>
> (5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

76 Singer J accepted that the amendments sought did not amount to adding or substituting a new cause of action. The learned judge also accepted, that under O 20 r 5(1) of the UK RSC, he had a wide discretion to allow the amendment sought by the plaintiff. Yet, he declined to exercise his discretion on the ground that it would deprive the defendant of a "cast-iron" limitation defence. Singer J elaborated thus (at 774–775):

> The ultimate question is therefore one of discretion under [O 20 r 5(1)]. … I believe that the provisions of both statute and rules … contain powerful indicators of how the judicial discretion should be approached in a case such as this. The words "nevertheless" and "notwithstanding" point up that the court, if it permits such addition or substitution, is acting in an unusual and indeed extreme manner. Yet there envisaged are situations where what is sought is the addition or substitution of a claim which would have been valid in terms of limitation periods at the time of issue of the writ, even though that period has since expired.
>
> *But to allow the amendment sought in this action would deprive the defendant of a good limitation defence which has arisen out of the way in which the plaintiff has chosen to plead her case. In the light of my conclusion that the three-year limitation period applied in this action as pleaded up to the point when it reached the Master, this is therefore a case where the limitation defence has been throughout available to the defendant.*
>
> [emphasis added]

77 Singer J's reasoning was criticised by the English Court of Appeal in *Shade v The Compton Partnership* [2000] PNLR 218 ("*Shade*"). In *Shade*, the plaintiff had instructed the defendant solicitors to sue his former solicitors for negligently carrying out a conveyancing transaction. However, a writ was not issued in time and the plaintiff's claim against his conveyancing solicitors was time-barred as a result. The plaintiff then commenced proceedings against the defendant. Apart from claiming damages for financial loss, the plaintiff claimed that that the defendant's professional negligence had caused him to suffer physical and psychiatric damage. The plaintiff, however, served his writ after the three year limitation period for personal injuries claims and the defendant applied to strike out the claim on the ground that it was time-barred.

78 At first instance, the plaintiff's action was struck out. On appeal, the court accepted (at 219) that, as the damages claimed by the plaintiff included damages in respect of personal injuries, a limitation period of three years applied to the action. However, instead of striking out the plaintiff's action, the court granted leave to the plaintiff to amend his statement of claim to sever the personal injury claims. Walker LJ, who delivered the leading judgment, noted at the outset that (at 223):

> … [A] pleading should not be struck out as hopeless if it is one that can be cured by a permissible amendment. That is why the question of a possible amendment should be considered on a strike out application.

In so far as the decision in *Oates* was concerned, Walker LJ described (at 224) the reasoning in that case as being "less than fully satisfactory". He continued thus (*ibid*):

> It may be arid to discuss whether the deletion of a part of pleading should be regarded as the substitution of one cause of action for another. It is possible to think of some cases in which that would, at least at first sight, be so, such as a case where the deletion of the single word "fraudulently" might substitute a claim based on innocent misrepresentation for one based on deceit. Simply to delete parts of the damages claimed to have been caused by a single breach of duty is not easily described as a substitution as it is clearly not an addition to a claim.

79 Walker LJ went on to disagree with the view expressed in *Oates* that an amendment should be refused if it would have deprived the defendant of a limitation defence that he would have had at the time of service of the writ. He observed as follows (at 224–225):

> Depriving a defendant on an accrued limitation defence by amendment, *is a material factor in the exercise of the court's discretion when, and it seems to me only when, the claimant could not usefully start new proceedings*...
>
> …
>
> I consider that Mr Shade should have been given the opportunity, had the case taken that route of seeking permission to amend his statement of claim so as to delete the claims for damages for personal injuries so far as the Master's order, if upheld, did not automatically do that for him. I consider that such permission ought not to be refused on limitation grounds because the new claim (and it can be called that in the loose sense) would not have been statute barred if raised in new proceedings commenced at the time of the hearing before the Master.
>
> [emphasis added]

80 Finally, Walker LJ (at 225–226) sought to distinguish the earlier Court of Appeal decision in *Walkin* in the following way:

> *Walkin* was a case of a claim for damages in respect of an unwanted pregnancy which followed after an unsuccessful operation for female sterilisation. *The whole claim, both as to pain and as to economic loss, followed solely from the effect of the unsuccessful medical treatment on the plaintiff's physical condition.* The fact that a second writ was issued in that case claiming economic loss only could not alter the character of that particular and unusual type of claim … [emphasis added]

In such cases, the learned judge was of the view that *common sense* should dictate whether an amendment should be allowed to sever the personal injuries claim.

81 For completeness, we also note that the leading textbooks on the subject of limitation periods have endorsed the approach taken by Walker LJ in *Shade*. Andrew McGee, for example, in his book titled *Limitation Periods* (Sweet & Maxwell, 6th ed, 2010) has opined (at p 159) that:

> It is submitted that Robert Walker L.J. [in *Shade*] is right. Although the point is not expressly dealt with in the CPR, in most cases there will be no reason to refuse to allow such an amendment – a claimant ought to be allowed to abandon any part of his claim at any time, subject, of course, to any appropriate costs orders which might follow from that decision.

Rodney Nelson-Jones, Frank Burton QC and Andrew Roy, the learned authors of *Personal Injury Limitation Law* (Tottel Publishing, 2nd ed, 2007), similarly take the view (at p 24) that:

> It would therefore seem permissible for a claimant in certain circumstances where the personal injury is not very substantial and where the injury itself has not directly caused economic loss to sever off that part of the claim to avoid the 3 year primary limitation period.

82 Returning, then, to the case before this court, for the reasons set out below, we would respectfully differ from the Judge's conclusion that, because the Appellant has claimed damages for personal injuries in relation to some of his pleaded causes of action, a limitation period of three years

applies to his *entire suit*. Citing the cases of *Walkin*, *Bennett* and *Oates*, however, Mr Khoo submits that the Judge was correct in reaching the conclusion which he did. Mr Khoo states that s 24A(2) applies to any "action" where the damages claimed "consist of or include" damages in respect of personal injuries. He further points out that "action" is defined by s 2(1) of the Act to include "a suit or any proceedings in court".

83 With respect, we are unable to agree with the *overly literal interpretation* of s 24A(2) which Mr Khoo seeks to advance. In our judgment, where a plaintiff's suit comprises several causes of action, the three year limitation period under *s 24A(2) only applies to the causes of action under which the Appellant has claimed damages for personal injury and not more generally to the entire suit*. This is borne out by the following. First, the entire scheme of the Act is such that the relevant limitation period would depend on the nature of the cause of action that is pleaded. Secondly, the definition of "action" which Mr Khoo cites is an inclusive, as opposed to an exhaustive, one. Thirdly, reading the word "action" contextually, especially in the light of s 24A(1), it is plain to us that it refers to actions for breach of duty. Fourthly, under the Rules, a plaintiff is both permitted, and as a matter of practice, likely, to join as many causes of action as he has against a defendant in a single suit. If Mr Khoo's contentions are accepted, a plaintiff might be better off commencing separate actions to avoid limitation issues. This would be highly undesirable from the viewpoints of expediency as well as the saving of costs. Finally, the cases cited by Mr Khoo do not stand as authority for the proposition which he cites them for. Although alternative causes of action in negligence and breach of contract were pleaded in *Walkin*, *Bennett* and *Oates*, damages for personal injuries were claimed in relation to each cause of action.

84 At the hearing of the appeal, we raised the possibility of the Appellant being allowed to amend his statement of claim in order *to abandon his claims for damages for personal injury*. Mr Khoo conceded that, based on the decision in *Shade*, this court *did* have the discretion to allow such an amendment. In our view, Mr Khoo's concession was *properly made*. In this regard, we fully agree with the reasoning of Walker LJ in *Shade* (see above at [77]–[80]) and would gratefully apply it here. As was the case in *Shade*, even if the Appellant's causes of action which claim damages in respect of personal injuries are struck out, the Appellant will be *within the six year limitation period* and can commence fresh proceedings if such damages are not claimed. Therefore, we do not see how the Respondent would be prejudiced if the aforementioned amendment is allowed. In fairness to Mr Khoo, he did not in any event adopt such a position.

85 We should, however, point out that it is unclear from *Shade* whether such an amendment should similarly be allowed if, at the time of the proposed amendment, the plaintiff is also out of time to commence fresh proceedings in which damages for personal injuries are *not* claimed. Although this point was, not taken before us, we would, *parenthetically*, observe that there appears to be *no reason* to disallow such an amendment in *every* case. As a matter of *principle*, any amendments made to the writ would date back to the date the writ was *originally filed* (see, for example, the English Court of Appeal decision of *Warner v Sampson* [1959] QB 297 at 321). Hence, if the limitation period is current at the date the writ was filed, then the action, *as amended*, will be deemed to have been commenced within time. As a matter of *policy*, we do not think that the question of *prejudice* to the defendant should turn, *purely*, on whether the proposed amendment would deprive the defendant of a *technical* limitation defence which it could avail itself of now were a fresh writ to be filed but which would not have been available at the time the original writ was filed. Although limitation periods exist to protect defendants from stale claims being instituted against them, this must be *balanced* against the need to ensure that *meritorious claims are not unduly stifled by procedural requirements*. In our view, therefore, the issue of prejudice is one that depends, in the final analysis, on the *facts and circumstances of each case*, and, in particular, whether under the original pleading, the defendant was given *fair notice* of the claim being brought against him.

86 Applying what we have stated above to the case before us, we are of the view that the following of the Appellant's claims are for *damages in respect of personal injuries*: (a) general damages for assault and battery; (b) general damages for assault and battery (humiliation); (c) general damages for excessive use of force; (d) general damages for intentional infliction of emotional distress; and (e) damages for economic loss. In so far as item (e) is concerned, although the Appellant attaches the *label* of "economic loss" to his claim, it is, in *substance*, a claim for damages in respect of personal injuries. Conversely, the following heads of damages claimed by the Appellant are *not* damages in respect of personal injuries and can be properly severed from the claims which are: (a) general damages for loss of liberty arising from false imprisonment; (b) aggravated damages for loss of liberty arising from false imprisonment; (c) general damages for defamation; and (d) punitive damages for malicious prosecution, wrongful arrest and abuse of process. It should be pointed out that the Respondent takes the position that there are other grounds for striking out the Appellant's causes of action in malicious prosecution, abuse of process and defamation. We will come to these grounds later in our judgment. It suffices however, at this juncture, to state that, subject to our decision on those particular matters, we would be minded to allow the Appellant to amend his statement of claim to abandon his claims for damages for personal injuries.

87 Unfortunately, given how the parties chose to argue their respective cases, neither party took the point as to whether, as a matter of *law*, if a cause of action pleaded by the Appellant includes a claim for damages for personal injury, the three year limitation period under s 24A(2) would apply to bar the *entire* cause of action, or whether, the three year limitation period would only apply *in so far as damages were claimed in respect of personal injury*. As alluded to earlier, an argument was made by the plaintiff in *Walkin* that the unwanted pregnancy gave rise to *two* causes of action, one for damages for pre-natal pain and suffering and the other for post-natal economic loss incurred in raising the child. This argument did not find favour with the English Court of Appeal, which held that both claims for damages arose from a *single* cause of action. Without intending to cast any doubt on the correctness of the decision in *Walkin*, we do not, with respect, think that *Walkin* settles the position in so far as the point raised at the beginning of this paragraph is concerned. In this regard, we agree with Walker LJ's observation in *Shade* that *Walkin* was a case where the claim for economic loss was *closely related* to, and therefore *could not be severed* from, the personal injury suffered by the plaintiff (*ie*, the unwanted pregnancy). It is therefore not difficult to see why the court in *Walkin* rejected the argument which the plaintiff had sought to advance. In our view, the position is less clear in cases such as *Shade* where the claim for damages for personal injuries can be properly severed from the rest of the claim. It seems to us that, in these cases, it is at least arguable that the various heads of damages claimed give rise to separate causes of action, with the effect that the limitation period under s 24A(2) would only apply in so far as damages are claimed for personal injuries. In any event, as the point was not taken before us and since what we have stated above at [84]–[85] makes it unnecessary to deal with this point, we say nothing further on it and leave it for decision if a suitable case arises in the future.

Issue 2

88 Given our conclusion that the Appellant's suit is not absolutely time-barred, it becomes necessary to consider the Respondent's arguments that there are other grounds for striking out the Appellant's claims in malicious prosecution, abuse of process and defamation.

The Appellant's constitutional argument

89 To buttress his causes of action in malicious prosecution and abuse of process, the Appellant raises a preliminary argument concerning the interpretation of Art 9(4) of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution"). This Article reads as follows:

(4) Where a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a Magistrate, in person or by way of video-conferencing link (or other similar technology) in accordance with law, and shall not be further detained in custody without the Magistrate's authority.

90 The rationale underlying Art 9(4) of the Constitution is explained by Prof Thio Li-Ann as follows (see *A Treatise on Singapore Constitutional Law* (Academy Publishing. 2012) at para 12.076):

> Article 9(4) provides for the time period by which a person arrested and not released shall be brought before a Magistrate in person or by virtual means. This should be done "without unreasonable delay" and at any rate "within 48 hours". Further detention must be made with the Magistrate's authority. *This rule requires that the judicial mind is immediately directed towards the legality of an arrest and detention.* [emphasis added]

91 It will be evident from the language of Art 9(4) that it requires an arrested person, *if not released earlier*, to be brought before a Magistrate without "unreasonable delay". This means that Art 9(4) may be violated *even where* an arrested person is brought before a Magistrate within the 48 hour period, if the time taken to do so amounted to "unreasonable delay" in all the circumstances of the case. Likewise, the fact that a person is released, whether on police bail or otherwise, within the 48 hour period, does not necessarily preclude the possibility of Art 9(4) being contravened.

92 It is, however, also plainly the case that Art 9(4) does not confer an arrested person with an unqualified right to be brought before a Magistrate immediately upon his arrest. Rather, it recognises the need to afford the police a reasonable time in which to carry out their investigations. This point is further accentuated by the 1984 amendments to the Constitution which extended the maximum period for which a person could be detained from 24 to the present 48 hours. At the second reading, the then Prime Minister, Mr Lee Kuan Yew, explained the rationale for the longer time period to be as follows (see *Singapore Parliamentary Debates, Official Report* (24 July 1984) vol 44 at col 1723)

> The amendment is necessary to enable the Police to investigate offences more thoroughly. The present 24-hour limit places undue constraints on police investigations. As the Courts sit only during normal office hours, this means that, in practice, suspects who are arrested at night or outside office hours will have to be produced in court sometimes in a matter of eight to ten hours. By extending the limit to 48 hours, the Police will be in a better position to complete their investigations and to carry out follow-up action …

In our view, therefore, Art 9(4) requires the right of the individual against arbitrary detention upon arrest to be *balanced* against the need to afford the police reasonable time in which to carry out their investigations.

93 The need to balance an *individual's constitutional rights* against *other public interest considerations* was also alluded to in this court's recent decision in *James Raj s/o Ariokasamy v Public Prosecutor* [2014] 3 SLR 750 ("*James Raj*"). *James Raj* concerned an application for leave to refer a question of law of public interest to this court under s 397(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) as to the interpretation of Art 9(3) of the Constitution ("Art 9(3)"). Art 9(3) reads as follows:

(3) Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

In dismissing the application for leave, this court regarded its earlier decision in *Jasbir Singh and another v Public Prosecutor* [1994] 1 SLR(R) 782 ("*Jasbir Singh*") as settling the position that the right to counsel under Art 9(3) was not exercisable immediately, but, rather, only after a reasonable time, observing as follows (at [31]):

> In *Jasbir Singh*, this Court had considered what, at that time, was the only existing Singapore authority on the ambit of the constitutional right of access to counsel, namely the High Court decision in *Lee Mau Seng* [[1971–1973] SLR(R) 135]. ***There, it had been held that an arrested person who wished to consult a legal practitioner of his choice was entitled to have this constitutional right granted to him by the authority having custody of him within a reasonable time after his arrest*** (*Lee Mau Seng* at [12]). The Court of Appeal in *Jasbir Singh* noted that while *Lee Mau Seng* did not elaborate on what a "reasonable time" would be, it could be surmised that ***an allowance for police investigations and procedure was intended to be incorporated within the framework of a "reasonable time"*** (*Jasbir Singh* at [48]). The exercise of the right of access to counsel was framed in this way ***to strike a balance that was considered appropriate to our circumstances between, on the one hand, the arrested person's undoubted right to legal representation and, on the other hand, the public interest in enabling the police to discharge their duty and carry out investigations effectively and expeditiously*** (*Jasbir Singh* at [46]). [emphasis added in bold italics]

94 Returning then to the present case, the Appellant contended that under Art 9(4), the police were *obliged* to bring him before a Magistrate for a determination of whether there were reasonable grounds for this arrest, or in the Appellant's words, a "probable cause hearing". As he was not produced before a Magistrate but instead released on police bail, the Appellant submitted that his constitutional right under Art 9(4) had been violated.

95 We do not agree with the Appellant's contention. In accordance with what we have stated above, it will be evident that Art 9(4) does *not* confer a right upon an arrested person to be brought before a Magistrate upon his arrest in *every* case. Rather, *the right of the arrested person is more accurately characterised as one to not be detained for a period that is unreasonable in the circumstances, and which in any event does not exceed 48 hours, unless he is brought before a Magistrate*. If the arrested person is released within a reasonable time after his arrest, he does not have to be brought before a Magistrate.

96 The Appellant is therefore incorrect in arguing that Art 9(4) was contravened *merely* because he was not taken before a Magistrate upon his arrest.

Malicious prosecution

97 In *Zainal bin Kuning and ors v Chan Sin Mian Michael and anor* [1996] 2 SLR(R) 858 ("*Zainal*"), this court held (at [54]) that in order to establish a cause of action in malicious prosecution, a plaintiff must show: (a) he was prosecuted by the defendant, that is, the law must be set in motion against him on a criminal charge; (b) the prosecution was determined in his favour; (c) the prosecution was without reasonable and probable cause; and (d) the prosecution was malicious.

98 Mr Khoo contends that the first requirement in *Zainal* is not satisfied in the case before us because the Appellant was not charged, and therefore, not "prosecuted". We agree. As the Privy Council observed in *Amin v Bannerjee* [1947] AC 322 at 330:

> The foundation of the action [of malicious prosecution] *lies in abuse of the process of the court by wrongfully setting the law in motion*, and it is designed to discourage the perversion of the

machinery of justice for an improper purpose. [emphasis added]

The learned authors of *Clerk and Lindsell on Torts* (Michael A Jones gen ed) (Sweet & Maxwell, 20th ed, 2010) likewise define a "prosecution" to mean (at para 16-11):

> **What is a prosecution?** In establishing the first essential element of the tort of malicious prosecution two key issues must be addressed, what constitutes a prosecution? And who is the prosecutor? To prosecute is to set the law in motion, and the law is only set in motion by an appeal to some person clothed with judicial authority in regard to the matter in question, and to be liable for malicious prosecution a person must at least be actively instrumental in so setting the law in motion.

A prosecution therefore requires that the criminal law is set in motion against the plaintiff either on a criminal charge or under a private prosecution.

99 We should state that the Appellant accepts that a prosecution requires the criminal law to be set in motion against him. However, he argues that a prosecution commenced at the time of his arrest as the criminal law ought to have been set in motion by the "probable cause hearing" that he was entitled to, but did not receive, under Art 9(4) of the Constitution. As we have explained above at [89]–[96], Art 9(4) did not provide the Appellant with the right that he contends for. His arguments in this regard must therefore fail.

100 It follows that the claim for malicious prosecution plainly does *not* disclose a reasonable cause of action and should be struck out. We are not minded, and it is indeed not necessary for us, to make any finding on the issue of *malice*.

Abuse of process

101 In relation to the Appellant's claim for an abuse of process, it should be noted at the outset that it is unclear whether this is a recognised free standing cause of action at law and further, whether this is a cause of action capable of giving rise to a claim *for damages*. In *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 ("*Phyllis Tan*"), the High Court noted (at [130]) that:

> Although the concept of "abuse of process" is not a precise one, its essence is the use of the judicial process for a purpose for which it is not intended or in circumstances where the extraneous purpose is the dominant purpose for its use.

102 Similar sentiments were expressed by the English Court of Appeal in *Land Securities Plc & Ors v Fladgate Fielder (A Firm)* [2010] Ch 467, where Moore-Bick LJ observed as follows (at [77]):

> Although the concept of abuse of process is well known to the law, both in civil and criminal proceedings, *it has rarely been treated as giving rise to a cause of action*. More commonly it is relied on as a ground for terminating proceedings that constitute an abuse and as such is a flexible concept for preventing injustice. [emphasis added]

103 It will also be evident from this that courts have generally regarded the concept of an abuse of process as referring to an *abuse of the judicial process*. On this note, Mr Khoo submits that, as no judicial proceedings were commenced against the Appellant, there could be no abuse of process. Conversely, the Appellant contends that there could be an abuse of process because the judicial process *ought to have been invoked* by bringing him before a Magistrate for a probable cause hearing,

in accordance with Art 9(4) of the Constitution. He further contends that the abuse of process lies in the Attorney-General's direction to the police not to take him before a Magistrate in contravention of the same article of the Constitution. In this regard, the Appellant cites *Phyllis Tan* where the court held (at [148]):

> Under the law, the Attorney-General must act according to law, as his prosecutorial power is not unfettered … First, he may not use his prosecutorial power in bad faith for an extraneous purpose. Second, he may not use it so as to contravene constitutional rights, such as the right to equality before the law and the equal protection of the law.

104 In our view, the Appellant's contentions are untenable. We find that there was *no* abuse of the judicial process for the simple reason that judicial proceedings were never commenced against the Appellant in the first place as he was not charged. Further, for the reasons which we stated above at [89]–[96], we disagree with the Appellant's suggestion that judicial proceedings ought to been commenced against him by bringing him before a Magistrate. For the same reasons, under the principles enunciated in *Phyllis Tan* (see above at [103]), the Attorney-General did not act in excess of his prosecutorial powers.

105 In the event, the claim for abuse of process discloses no reasonable cause of action and should be struck out.

Defamation

106 To establish a *prima facie* case of defamation, a plaintiff must prove the following three elements: (a) the statement must be defamatory in nature; (b) the statement must refer to the plaintiff; and (c) the statement must be published (see Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2011) ("*Law of Torts in Singapore*") at para 12.009).

107 As already mentioned, the Appellant relies on two statements to make out his claim in defamation. The first is the police officer's statement "breach of PPO" when asked by the doctor at CGH about the Appellant's wrongdoing. The second is the doctor's comment that the Appellant had only suffered a "small injury".

108 As a preliminary point, we note that the Appellant's claim in defamation is deficient as *matter of pleading*. In this regard, O 78 r 3 of the Rules is germane and it sets out the particulars which must be provided when pleading a claim in defamation:

> **Obligation to give particulars (O. 78, r. 3)**
>
> ***3.*** *—(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in respect of such sense.*
>
> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
>
> (3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously

published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(3A) Without prejudice to Order 18, Rule 12, the plaintiff must give full particulars in the statement of claim of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the plaintiff's own circumstances.

(4) This Rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

[emphasis added]

109 Applying O 78 r 3 of the Rules to the present case, it was incumbent upon the Appellant to: (a) identify whether the offending words were defamatory in their ordinary meaning or in terms of innuendo; and (b) set out all the facts and particulars which he intended to rely upon to support his claim for damages. In the context of point (b), we note that the Appellant had failed to plead particulars of the extent of publication of the allegedly defamatory statements. Besides the doctor and the police officer, the Appellant's statement of claim did not identify anyone else who was present in the examination room at the time the alleged statements were made. Moreover the defamation here is a slander, as opposed to a libel, and the common law rule is that a slander requires proof of special damage (see *Law of Torts in Singapore* at para 12.005), unless one of the statutory exceptions under ss 4, 5 and 6 of the Defamation Act (Cap 75, 2014 Rev Ed) applies, which was not the case here. This court is unable to infer any special damage occasioned by the slander from the Appellant's pleaded case without which there is no cause of action. In other words, the Appellant's complaint of slander bears no discernible cause of action, and is susceptible to being struck out under O 18 r 19(1)(*a*) or under the court's inherent jurisdiction.

110 That having been said, we should not lose sight of the fact that the Appellant's claim in defamation is also legally unsustainable in other respects.

111 In relation to the doctor's comment, we agree with Mr Khoo's submission that the *proper defendant* to such a claim is the doctor himself or his employers. The Respondent *cannot* be made liable for statements made by the employees of CGH, which is privately managed by Changi General Hospital Pte Ltd. We also note that the Appellant did not assert to the contrary in this regard.

112 In relation to the police officer's statement, the Respondent first contends that the statement was made on an occasion of qualified privilege. The law in this regard is *settled*. The defence of qualified privilege applies where the defendant to a defamation suit has an *interest or duty*, whether legal, social or moral, to communicate the information and the recipient has a *corresponding interest or duty* to receive the information: see *Law of Torts in Singapore* at para 13.063. It is also pertinent to note in this regard that the privilege attaches to the *occasion* on which the defamatory statement is made *and not the statement itself*: see this court's decision in *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 331 at [34]. There is, therefore, *no need to apply an objective test of relevance to every part of the defamatory matter as a pre-condition to the existence of the privilege*: see *ibid*. However, it is equally important to note that the aforementioned is *subject to* the following *caveat* which is succinctly explained by the learned author of *Law of Torts in Singapore* in the following terms

(at para 13.062):

> Even though a statement may be published on a privileged occasion, parts of the statement which are ***totally irrelevant or extraneous*** may nevertheless fall outside the ambit of the defence. Such irrelevant or extraneous words may constitute evidence of malice. ***However, if those parts of the statements are relevant but excessive or exaggerated, they would remain protected by the defence*** . [emphasis added in bold italics]

113 In the present case, the Appellant appeared to acknowledge (correctly, in our view) that, as he was under arrest at the time of the medical examination, the *relationship* between the police officer and the doctor was such that the police officer had a duty or an interest to answer the doctor's questions. He *nonetheless* contended that qualified privilege *did not apply on the facts of this case* because the doctor was not under a *duty* to include details of the Appellant's wrongdoing in his medical report, because it contributed nothing to the Appellant's diagnosis and his treatment, and, therefore, the doctor could not be said to have a corresponding duty or interest to receive the information communicated by the police officer.

114 With respect, we are *unable* to agree with the Appellant's submission which, in our view, is *overly pedantic*. As stated above (at [112]), the test as to whether the police officer's statement was made on an occasion of qualified privilege *does not require an objective test of relevance to be applied to every statement made*, but, rather, the issue is *whether the statements made can be said to be plainly extraneous or irrelevant*. It is therefore necessary to have regard to the full context of what – *according to the Appellant* – had transpired in the medical examination. Pertinently, on the Appellant's own case, when he was brought to CGH for his medical examination, he was handcuffed and escorted by the two police officers. It was in this light that the doctor had first asked how the Appellant had gotten injured. Having been informed by the Appellant that his wife had beaten him, it was not only logical but within the scope of the doctor's duty for him to inquire as to why the Appellant had been arrested, or in the Appellant's own words, his "wrongdoing". Moreover, the doctor had recorded in the Appellant's medical report that he was "arrested for breach of PPO". *Even if* the doctor was not under a strict duty – or in other words, an obligation – to include this information in the Appellant's medical report, it *could not* be said that the information requested was *plainly irrelevant or extraneous*, such that the police officer's statement was outside the ambit of the qualified privilege. We also note, for completeness, that the Appellant *did not suggest that the statement was motivated by malice*, such that the defence of qualified privilege would be defeated. It follows from this that the Appellant's claim in defamation ought to be struck out.

115 As a further basis for striking out the Appellant's claim in defamation, the Respondent contended that given the extremely limited publication of the statements made by the doctor and the police officer, the Appellant's claim in defamation ought to be struck out. In this regard, Mr Khoo cited the decision of the English Court of Appeal in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 ("*Jameel*"). In *Jameel*, the foreign claimant issued defamation proceedings in England against the publisher of an American newspaper in respect of an article posted on a website in the USA. The publisher adduced evidence showing that only five persons in the jurisdiction had accessed the website, of which three persons were from the claimant's camp. The publisher subsequently applied to strike out the claim on the ground that it had no reasonable prospect of success. Arguments before the court proceeded on the basis that only five persons had viewed the allegedly defamatory material.

116 In striking out the claim, the court held that there was no "real and substantial tort" allegedly committed within the jurisdiction and that it would be an abuse of process for the plaintiff to proceed with his claim, even though the publisher had not objected to the jurisdiction of the English courts on

the ground of *forum non conveniens* earlier. The court observed (at [54], [69] and [70]) that:

> 54 … An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice. If [the publisher] have caused potential prejudice to the claimant by failing to raise the points now pursued at the proper time, it does not follow that the court must permit this action to continue. The court has other means of dealing with such prejudice…
>
> …
>
> 69 If the claimant succeeds in this action and is awarded a small amount of damages, it can perhaps be said that he will have achieved vindication for the damage done to his reputation in this country, but both the damage and the vindication will be minimal. The cost of the exercise will have been out of all proportion to what has been achieved. The game will not merely not have been worth the candle, it will not have been worth the wick.
>
> 70 If we were considering an application to set aside permission to serve these proceedings out of the jurisdiction we would allow that application on the basis that the five publications that had taken place in this jurisdiction did not, individually or collectively, amount to a real and substantial tort. Jurisdiction is no longer in issue, but, subject to the effect of the claim for an injunction that we have yet to consider, we consider for precisely the same reason that it would not be right to permit this action to proceed. It would be an abuse of process to continue to commit the resources of the English court, including substantial judge and possibly jury time, to an action where so little is now seen to be at stake. Normally where a small claim is brought, it will be dealt with by a proportionate small claims procedure. Such a course is not available in an action for defamation where, although the claim is small, the issues are complex and subject to special procedure under the CPR.

117 The decision of *Jameel* has been followed by the English High Court in *Phillip Wallis and GHP Securities Limited v Justin Meredith* [2011] EWHC 75 (QB) and the English Court of Appeal in *Tamiz v Google Inc* [2013] 1 WLR 2151. Locally, *Jameel* was applied by Sundaresh Menon JC (as he then was) in the Singapore High Court decision of *Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2007] 2 SLR(R) 453, albeit in the *different context* of a challenge to the jurisdiction of the court by a defendant against whom the plaintiff had been granted leave to effect service of the writ out of jurisdiction. *Jameel* was also referred to (also in a *different context*) in the Singapore High Court decision of *Ng Koo Kay Benedict and another v Zim Integrated Shipping Services Ltd* [2010] 2 SLR 860 at [44]. However, there was a direct application of *Jameel* in the Singapore District Court decision of *Kesavan Engineering & Construction Pte Ltd v S P Powerassets Limited* [2011] SGDC 179.

118 It is also pertinent to note that since *Jameel* was decided under a set of procedural rules which are fundamentally different from those in Singapore (see, for example, *Gatley on Libel and Slander* (Alastair Mullis & Richard Parkes QC joint eds) (Sweet & Maxwell, 12th ed, 2013) ("*Gatley*") at para 30.48), and because it entails – in part, at least – the (potentially far reaching) proposition that an action may be struck out on the basis that the *publication* of the defamatory material is *limited*, or the *amount* claimed as damages is *de minimis*, the principle enunciated in that case should be approached with the *necessary circumspection* by the Singapore courts. In this regard, we find the following observations of the learned authors of *Gatley* (at para 6.2) to be instructive:

> However, the question whether there has been a real and substantial tort cannot "depend upon a

> numbers game, with the court fixing an arbitrary minimum according to the facts of the case" and the *Jameel* jurisdiction should not be pushed too far. It does not mean that any sort of mass production is always necessary for a successful suit, otherwise claims for slander (which sometimes lead to substantial awards of general damages) would largely disappear. It is not difficult to conceive of claims for slanders or libels with limited circulation which would cause the claimant great embarrassment or distress or which might blight his financial prospects.

We also note, however, that the same authors have also observed as follows (at para 30.48):

> While the central principles are now tolerably clear, the precise nature and reach of the jurisdiction is not. Despite it being axiomatic that it is only in the most clear and obvious cases that it will be appropriate to strike out proceedings as an abuse of process, it may be difficult to predict with confidence in any particular case whether the court will or will not agree that the claim is a *Jameel* abuse. Moreover, an incorrect prediction may prove costly: it is not unusual for *Jameel*-based applications to involve in-depth scrutiny of the germane facts, circumstances and evidence. Nevertheless, what unifies the authorities that make up the relevant jurisprudence is that in each case it was open to the defendant, generally at an early stage, to present the claim as one that was, for one reason or another, trivial or pointless, such that it would be disproportionate to permit it to proceed any further. The question of whether it is or is not proportionate for the proceedings to continue is answered by the court with reference to what is in essence a cost-benefit calculation, "cost" in terms of the parties' costs and, perhaps more importantly, the impact upon the court's increasingly hard-pressed resources, and "benefit" in terms of the true value to the claimant of any realistically available remedy.

119 In another leading work, *Carter-Ruck on Libel and Privacy* (Alastair Mullis & Cameron Doley gen eds) (LexisNexis, 6th ed, 2010), it is observed as follows (at para 28.44):

> Of particular importance in defamation actions is the category of abuse established by the Court of Appeal in *Jameel v Dow Jones and Co* which is related not to the conduct of the parties but derives from the principle of proportionality. If a publication is unlikely to have caused the claimant significant damage within the jurisdiction there is no prospect of the court granting an injunction to restrain further publication and the claimant would be entitled only to nominal damages; the claim may be struck out as an abuse of process on the basis that the cost of pursuing proceedings would be out of all proportion to the minimal vindication that would be achieved. The sanction will not be appropriate in every case.

However, there are also reservations expressed in the context of the *application* of *Jameel* itself in the footnotes to the extract just cited. For example, in note 3, it is submitted that "there is no reason of principle why the category of abuse [in *Jameel*] should be limited to cases in which the damage to the claimant's reputation is minimal only when it is so because of the size of the publication". And, in note 7, it is noted that "[p]ublication to a limited number of people may still be very damaging", observing that "[i]n *Sanders v Percy* [2009] EWHC 1870 (QB) the court declined to order that an action based on publication to the claimant's solicitor was an abuse in circumstances in which the allegation was a serious one made by a court officer".

120 In the court below, the Judge, in following *Jameel*, held that the Appellant's claim in defamation did not disclose a "real and substantial tort" and, on that note, was an abuse of process of the court and ought to be struck out. On appeal, Mr Khoo invited us to make a determination to the same effect. In light of our decision above at [111]–[114], it is, *strictly speaking*, not necessary for us to decide whether the Judge was correct in following *Jameel*. That having been said, there is a relatively significant body of authority in England endorsing the general principle established in *Jameel, viz*, that

a claim which discloses no real and substantial tort is liable to be struck out for being an abuse of process of the court, and the real concerns (as we have seen above) relate to its *application*. This last-mentioned point is not surprising in view of the fact that the line-drawing required is not only fact-centric but may also be difficult to effect in borderline situations. Further, and leaving aside the differences in the rules of civil procedure between England and Singapore, *Jameel* also contains some *general principles* that may be applicable in the Singapore context. Hence, applying the principle in *Jameel* to the facts of the present case, we would be of the view that this was far from being a borderline situation and that the Judge was therefore correct in following and applying *Jameel* and holding that the Appellant's claim in defamation did not disclose a real and substantial tort. This would have served as a *yet further* reason as to why the Appellant's claim in defamation should fail.

121 For completeness, we note the Appellant's argument that for the principle in *Jameel* to apply, the Respondent had to prove that the publication was made to no more than five persons. With respect, we are unable to agree. Bearing in mind our discussion above at [106], the burden of establishing a cause of action in slander fell squarely on the Appellant. In the context of publication of the words, and this relates to the question of who heard the police officer's statement apart from the doctor, the burden of proving publication is also squarely on the Appellant.

Wrongful arrest

122 Before concluding, we wish to make some observations regarding the Appellant's claim for punitive damages for wrongful arrest. At the hearing, it appeared to us that there was some confusion between the parties as to whether this claim *had been*, or for that matter, *should be*, struck out.

123 At first instance, the AR found that the Appellant was using the term "wrongful arrest" interchangeably with false imprisonment. He therefore amended the first page of the Appellant's statement of claim to read "punitive damages for false imprisonment". He also allowed the claim for damages for loss of liberty arising from false imprisonment to remain. The Respondent *did not file an appeal* against the AR's decision to allow these claims to remain.

124 The Judge, having found that the Appellant's *entire suit* was time-barred, allowed the Appellant's claim for damages for loss of liberty arising from false imprisonment to remain as the Respondent did not appeal against the "indulgence" granted by the AR to the Appellant (see GD at [54]). It is not clear, however, whether the Judge also allowed the claim for punitive damages for false imprisonment to remain. Indeed, the Judge did not *expressly* refer to this particular aspect of the AR's decision in his grounds. This is further complicated by the fact that the Judge went on to find that a wrongful arrest was not an independent tort or a cause of action, as distinct from false imprisonment. Curiously, in his notice of appeal filed in Civil Appeal No 142 of 2013, the Appellant did not appeal against the Judge's decision to strike out his claim for wrongful arrest.

125 We are minded to uphold the AR's decision to amend the Appellant's statement of claim to read "punitive damages for false imprisonment". At the hearing, the Appellant clarified that he was using the terms "false imprisonment" and "wrongful arrest" interchangeably. In this regard, apart from arguing that the entire suit was time-barred (an argument which we do not accept for reasons already stated), the Respondent did not demonstrate why the Appellant's claim for punitive damages for wrongful arrest, *ie*, false imprisonment, should be struck out. Consistently with our earlier observation (above at [86]) that the punitive damages sought by the Appellant for his false imprisonment claim are not "damages in respect of personal injuries" under s 24(2) of the Act, and bearing in mind the Appellant's clarification that he was using the terms "false imprisonment" and "wrongful arrest" interchangeably as well as the fact that the Respondent did not file an appeal

against the AR's decision, we see no principled basis for striking out the Appellant's claim in this regard.

Conclusion

126 For all the reasons set out above, we dismiss the appeal. The net result, therefore, is that the AR's decision stands, which means that the Appellant's false imprisonment claim (for damages for loss of liberty and/or for punitive damages) is *not* struck out. The Appellant is to pay the Respondent's costs of the appeal, which are to be taxed if not agreed. There will be the usual consequential orders.