Zheng Yu Shan v Lian Beng Construction (1988) Pte Ltd
[2009] SGHC 6

Case Number : DA 2/2008

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Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Lin Shiu Yi and Belinda Kaur (Hoh Law Corporation) for the appellant; Eu Hai Meng Michael (United Legal Alliance LLC) for the respondent

Parties : Zheng Yu Shan — Lian Beng Construction (1988) Pte Ltd

Employment Law – Employers' duties – Employer did not give precise instructions or provide more workers to carry out physically demanding work – Whether employer liable for breach of duty to provide safe system of work

Evidence – Proof of evidence – Judicial notice – Trial judge took judicial notice of fact that standing with both legs on scaffold less likely to cause injury compared to standing with one leg on scaffold and one leg on gap in wall – Whether judicial notice should be taken of such fact

Tort – Negligence – Breach of duty – Duty to provide safe system of work – Employer did not give precise instructions or provide more workers to carry out physically demanding work – Whether employer liable for breach of duty to provide safe system of work

Tort – Negligence – Contributory negligence – Employer's system of work unsafe – No proof that standing with one leg on scaffold and one leg on gap in wall more likely to cause back injury than standing with both legs on scaffold – No reason for worker to believe that standing with one leg on scaffold and one leg on gap in wall more likely to result in back injury – Whether employee contributorily negligent for his injuries

8 January 2009

V K Rajah JA:

Introduction

1 This is an appeal from the decision of the District Court, which held the appellant, Zheng Yu Shan ("the Appellant"), primarily responsible for a back injury which he sustained while at work and entered interlocutory judgment for him at 30% of the damages to be assessed (see *Zheng Yu Shan v Lian Beng Construction (1988) Pte Ltd* [2008] SGDC 67) ("the Judgment") at [34]). The proceedings were initiated by the Appellant after he sustained a serious back injury while removing metal formworks from a wall at a former worksite of the respondent, Lian Beng Construction (1988) Pte Ltd ("the Respondent"). At the conclusion of the hearing, I allowed the appeal and gave judgment in favour of the Appellant for the full sum of damages to be assessed. I now set out my reasons in full.

Background

The events leading to the Appellant's injury

2 At the material time, the Appellant was a 35-year-old construction worker employed by the Respondent. The Respondent was the main contractor of a condominium project, and the Appellant was working at the worksite of the project ("the Worksite").

3 On 31 May 2005, at about 6.10pm, the Appellant and his co-worker, Liu Shao Jing ("Liu"), were tasked by their foreman to manually remove metal formworks from a wall at the Worksite ("the Wall"). The Wall measured approximately 5m by 4m, and there was a gap at the top of it. Each metal formwork measured 1.8m by 0.3m, and weighed between 30kg and 35kg. The metal formworks had previously been assembled to create a mould into which cement had been poured, thereby creating a wall (*ie*, the Wall) when the cement hardened. After the cement had hardened, the metal formworks had to be removed from the Wall.

4 Under normal circumstances, a crane would have been used to remove the metal formworks from the Wall in one entire piece; *ie*, the metal formworks would have been removed as a single piece measuring approximately 5m by 4m (taking the dimensions of the Wall). The district judge who presided over the trial ("the District Judge") found, and it was not in dispute, that, in this particular case, a crane could not be used to remove the metal formworks from the Wall. This was because the Worksite was located near a school, and the boom of a crane could not be swung in the direction of the school due to the potential danger posed by the swinging boom of a crane to the school and/or its students and its staff. This was the stated reason why the Appellant and Liu had to remove the metal formworks manually, and in individual pieces.

5 Both the Appellant and Liu set out to do the work as instructed. Nobody, including the foreman, gave the Appellant or Liu instructions on how to effect the actual dismantling of the metal formworks itself. The method which the Appellant and Liu adopted was one which they had previously devised between themselves. The Appellant gave evidence, which was not challenged, that he and Liu had used this method once before, but most certainly not to remove metal formworks covering such a large area and not after the mould and the scaffold *vis-à-vis* the wall from which the metal formworks were to be removed had been set in place for several days. Liu, who gave evidence for the Respondent, testified that he had been very reluctant to remove the metal formworks manually and would have used a crane if possible.

6 The method which the Appellant and Liu used to remove the metal formworks at the material time was as follows. Both workers climbed to the top of the Wall via a scaffold that was positioned about 40cm to 60cm from the Wall, according to construction requirements. The scaffold was 4.5 levels high, and each level was approximately 1.7m to 1.9m in height. The first two levels of the scaffold were submerged in a 4m-deep water reservoir at the material time. Both the Appellant and Liu started dismantling the metal formworks from the top level of the scaffold and worked their way downwards. While both workers were on the top level of the scaffold, Liu dismantled the metal formworks and passed them to the Appellant. The Appellant then threw the metal formworks through the gap in the Wall. No hook was used by the Appellant to dislodge the metal formworks while both he and Liu were on the top level of the scaffold.

7 After removing the metal formworks from the top level of the scaffold, Liu moved to a lower level while the Appellant remained on the top level (near the gap in the Wall). Liu then prised part of each metal formwork away from the Wall and attached a hook (which the Appellant was holding onto) to the metal formwork, but without physically removing it entirely from the Wall. Using the hook, the Appellant then dislodged the metal formwork completely from the Wall, pulled it up to the top level of the scaffold and threw it through the gap in the Wall.

8 While the Appellant was lifting the dismantled metal formworks up to the top level of the scaffold to throw them through the gap in the Wall, he stood with one leg on the scaffold and the other leg at the gap in the Wall. This position was referred to by the District Judge as the "straddling position" (see the Judgment at [29]). The District Judge also noted that the Appellant had not adopted the straddling position at the beginning when he and Liu were working side by side on the top

level of the scaffold (*id* at [32]).

9 As the Appellant was pulling the 30th piece of metal formwork up to the top level of the scaffold, he felt a sharp pain in the middle of his back, and stopped work immediately thereafter. Since then, the Appellant has sought medical treatment for his back injury and has also undergone a spinal operation. Ever since his injury occurred, the Appellant has mostly been on medical leave and has not been able to work.

10 The Appellant commenced this action against the Respondent claiming damages for pain and suffering, loss of earnings and medical expenses. At the trial, only the issue of liability was canvassed. Only the Appellant gave evidence for himself, while Liu and Au Yean Loy ("Au"), the Respondent's safety officer, gave evidence for the Respondent. Both the Appellant and Liu gave evidence relating to the circumstances leading up to the former's injury as well as the work processes involved in dismantling metal formworks from a wall, while Au gave evidence only in relation to the latter issue.

The District Judge's decision

11 The claim by the Respondent that the Appellant's injury had nothing to do with it was dismissed by the District Judge. In her view, there was insufficient evidence to support the Respondent's contention that the Appellant had merely sprained his back while bending down to dismantle the metal formworks. Instead, she found the Appellant's account, *viz*, that he had sustained his back injury while receiving and lifting the metal formworks, to be more probable. For the purposes of this appeal, counsel for the Respondent conceded that the Respondent's case on this issue was a non-starter and did not pursue it.

12 The Respondent, the District Judge found, was prevented by conditions at the Worksite from using a crane to remove the metal formworks from the Wall. She held that the non-deployment of a crane *per se* did not mean that the Respondent had breached its duty to provide its employees with a safe system of work. In addition, the District Judge adopted the view that there was no evidence that the Respondent's failure to provide the Appellant with a rope to dismantle the metal formworks constituted a breach of the Respondent's duty to provide a safe system of work as the Appellant had not explained how the use of a rope could have prevented his injury. The Appellant did not take issue with either of these findings of the District Judge in this appeal.

13 The District Judge went on to consider if the Respondent had breached its duty to provide a safe system of work by not giving instructions to or supervising the Appellant and Liu *vis-à-vis* the dismantling of the metal formworks from the Wall. She found that the Respondent had not acted unreasonably in leaving the Appellant to draw on his expertise and his previous experience to determine how to carry out the dismantling work manually as the latter was familiar with the work processes involved in the manual dismantling of metal formworks (see the Judgment at [26]).

14 Further, the District Judge formed the view that, given that a crane could not be used to dismantle the metal formworks in this particular case, the system of pulling and lifting metal formworks while one was positioned with both legs on the scaffold was a safe system of work. In reaching her decision, the District Judge took judicial notice of the premise that the risk of the Appellant suffering a back injury would have been reduced if the latter had stood with both legs on the scaffold, instead of in the straddling position, while carrying out the dismantling work. She asserted (see the Judgment at [28]):

> I would take judicial notice and agree with the [Respondent's] submission that had the [Appellant] stood with both his legs on the scaffold platform providing proper weight distribution,

balance and stability, the risk of back injury would be reduced.

For convenience, the above standing position, as described by the District Judge, will be referred to hereafter as the "scaffold position". In the final analysis, after taking into consideration the lack of supervision by the Respondent on the one hand and the Appellant's unilateral adoption of the straddling position (as opposed to the scaffold position) on the other hand, the District Judge apportioned liability for the Appellant's injury at 70% to the Appellant and 30% to the Respondent. The crux of her decision was summarised at [33] of the Judgment, where she held:

> From my analysis of the facts, the [Appellant] was primarily responsible for causing the injury to his back. *The [Appellant] did not in his own interest … take reasonable care of himself when he unilaterally placed one leg on the scaffold and the other leg in the wall opening [*ie*, at the gap in the Wall] to facilitate the task of pulling and lifting the [metal] formworks*. As V K Rajah JC (as he then was) opined, "safety considerations should take precedence over convenience" ([*Cheong Ghim Fah v Murugian s/o Ramasamy* [2004] 1 SLR 628 at [90]]) and the [Appellant] … ought to have foreseen that his failure to act prudently could result in injury to himself. In my judgment, the [Respondent's] culpability is significantly less than the [Appellant's]. As I have found, the [prising], lifting and throwing method used by the [Appellant] and Liu in the manual dismantling of [the metal] formworks [was] an accepted and safe method, provided the [Appellant] had both feet planted on the scaffold platform. No cogent evidence was adduced to show a nexus between the [Appellant's] injury and his physical working environment. There is then only the question of supervision of the [Appellant's work]. Based on the evidence, there could be no more than a mere possibility of the [Respondent] discovering the [Appellant's] unsafe straddling position and stopping him from inflicting injury on himself. Taking all the circumstances of the case into consideration, the [Appellant] ought in my judgment … to bear liability to the extent of 70%. It follows that the [Respondent's] liability is apportioned at 30%. [emphasis added]

The grounds of appeal

15 The Appellant's appeal centred on the District Judge's determination that there had been a safe system of work in place. The Appellant argued that the Respondent had not provided him with sufficient supervision and instruction. He submitted that, regardless of whether he had adopted the straddling position or the scaffold position at the material time, the method of dismantling metal formworks which he and Liu had to resort to (due to the unavailability of a crane) had been unsafe. It was further contended that, in any case, the straddling position adopted by the Appellant was safer than the scaffold position.

16 The Respondent, on the other hand, contended that the District Judge's finding that the Appellant was 70% liable for his injury ought to stand. It argued that the system of work which it had put in place was safe, and the Appellant ought to have adopted the scaffold position when carrying out the dismantling work. Thus, the Appellant, by unilaterally adopting the straddling position, had primarily himself to blame for varying the safe system of work.

17 As can be seen, this appeal turned on whether the method of dismantling metal formworks adopted by the Appellant and Liu was a safe system of work. In summary, the issues that arose for my determination were:

> (a) whether judicial notice could be taken of the premise that a worker carrying out the sort of dismantling work performed by the Appellant at the material time was less likely to be injured if he adopted the scaffold position as opposed to the straddling position (and, conversely, the premise that such a worker was more likely to be injured if he adopted the straddling position);

(b) whether the Respondent was in breach of its duty to provide the Appellant with a safe system of work; and

(c) if the question in (b) above were answered in the affirmative, whether the Appellant was contributorily negligent *vis-à-vis* his injury.

Did the District Judge err in taking judicial notice of the decreased likelihood of injury associated with the scaffold position?

18 The District Judge took judicial notice of the premise that "had the [Appellant] stood with both his legs on the scaffold platform providing proper weight distribution, balance and stability, the risk of back injury would be reduced" (see the Judgment at [28]). She also noted that there had been no previous injuries amongst the Respondent's workers in the three years preceding the date of the Appellant's injury, and that the hook used by the Appellant at the material time was sufficiently long for him to reach the metal formworks at the lower level of the scaffold where Liu was positioned. The above formed the foundation of the District Judge's decision that the system of pulling and lifting metal formworks while one was positioned with both legs on the scaffold (*ie*, while one stood in the scaffold position) was a safe system of work. It is thus crucial to consider whether the District Judge correctly took judicial notice of the decreased likelihood of injury associated with the scaffold position (and, conversely, the increased likelihood of injury associated with the straddling position).

Matters of which judicial notice may be taken

The statutory position

19 Before I analyse whether it was appropriate for the District Judge to take judicial notice of the (supposed) higher risk involved in adopting the straddling position in the present case, it would be helpful to reiterate the applicable principles for taking judicial notice of facts.

20 While it is trite law that, in general, all facts in issue and all relevant facts must be substantiated by evidence and proved, the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") provides an exception to this general rule in so far as it permits the court to take judicial notice of certain facts without those facts having to be proved. The statutory provisions relating to judicial notice are found in ss 58 and 59 of the EA, which I now set out in full, as follows:

Fact judicially noticeable need not be proved

58. No fact of which the court will take judicial notice need be proved.

Facts of which [the] court must take judicial notice

59.—(1) The court shall take judicial notice of the following facts:

(*a*) all laws or rules having the force of law now or heretofore in force or hereafter to be in force in Singapore, including all Acts passed or hereafter to be passed by Parliament;

(*b*) all Acts passed or hereafter to be passed by the legislature of any territory within the Commonwealth;

(*c*) articles of war for the armed forces of Singapore or any visiting forces lawfully present in Singapore;

(*d*) the course of proceedings of Parliament and of the legislature of any territory within the Commonwealth;

(*e*) the election of the President and the appointment of any person to exercise the functions of the President;

(*f*) all seals of which English courts take judicial notice, the seals of all the courts in Singapore, the seals of notaries public, and all seals which any person is authorised to use by any law in force for the time being in Singapore;

(*g*) the appointment, accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in Singapore, if the fact of their appointment to such office is notified in the *Gazette;*

(*h*) the existence, title and national flag of every State or Sovereign recognised by the Government;

(*i*) the ordinary course of nature, natural and artificial divisions of time, the geographical divisions of the world, the meaning of English words, and public festivals, fasts and holidays notified in the *Gazette*;

(*j*) the territories in the Commonwealth;

(*k*) the commencement, continuance and termination of hostilities between Singapore or any other part of the Commonwealth and any other country or body of persons;

(*l*) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and solicitors and other persons authorised by law to appear or act before it;

(*m*) the rule of the road on land or at sea;

(*n*) all other matters which it is directed by any written law to notice.

(2) In all these cases, and also on all matters of public history, literature, science or art, the court may resort for its aid to appropriate books or documents of reference.

(3) If the court is called upon by any person to take judicial notice of any fact, the court may refuse to do so unless such person produces any such book or document as it considers necessary to enable it to do so.

21 To better understand the intent and purport of the above provisions of the EA, it will be helpful to examine the legislative intention underlying them. Article 61 of Sir Henry Lushington Stephen & Lewis Frederick Sturge, *A Digest of the Law of Evidence by the late Sir James Fitzjames Stephen* (Macmillan and Co Limited, 12th Ed, 1936) ("*Stephen's Digest*"), the legal grandfather of these provisions, provides (*id* at pp 81–83) a list of facts which the judge has a "duty" (*id* at p 81) to take judicial notice of. Article 62 of *Stephen's Digest* states (*id* at at pp 83–84):

No evidence of any fact of which the Court will take judicial notice need be given by the party alleging its existence; but the judge, upon being called upon to take judicial notice thereof, may,

if he is unacquainted with such fact, refer to any person or to any document or book of reference for his satisfaction in relation thereto, or may refuse to take judicial notice thereof unless and until the party calling upon him to take such notice produces any such document or book of reference.

22 In addition, Note XI to Art 61 of *Stephen's Digest* states (*id* at p 203):

> The list of matters judicially noticed in this article is not intended to be quite complete. Further details will be found in Taylor, ss. 4–21; Roscoe, 82–87; and Phipson, 18–26. It may be doubted whether an absolutely complete list could be formed, as it is practically impossible to enumerate everything which is so notorious in itself, or so distinctly recorded by public authority, that it would be superfluous to prove it.

23 From the above, the following principles in relation to s 59 of the EA can be safely deduced. First, s 59 of the EA was never intended to provide an exhaustive list of matters of which judicial notice may be taken. Second, s 59(2) of the EA was not drafted with the intention of restricting a judge to referring to only books or documents of reference which deal with the specific matters delineated in ss 59(1) and 59(2). This is clear from Art 62 of *Stephen's Digest* (reproduced at [21] above), which states that a judge who is called upon to take judicial notice of a particular fact may, if he is unfamiliar with such fact, refer to "*any* person or to *any* document or book of reference for his satisfaction in relation thereto" [emphasis added] (see Art 62 of *Stephen's Digest*). Third, s 59(2) of the EA allows the court to consult appropriate books or documents of reference concerning the matters set out in ss 59(1) and 59(2) even for purposes other than taking judicial notice of those matters (see Sripada Venkata Joga Rao, *Sir John Woodroffe & Syed Amir Ali's Law of Evidence* (Butterworths, 17th Ed, 2001) ("*Woodroffe & Ali*") vol 2 at p 2709). The following summary in Sudipto Sarkar & V R Manohar, *Sarkar's Law of Evidence* (Wadhwa & Co, 16th Ed, 2007) ("*Sarkar*") (at p 1118) is especially helpful:

> With regard to the facts enumerated in [the Indian equivalent of s 59 of the EA], if their existence comes [into] question, the parties who assert their existence, or the contrary, need not in the first instance produce any evidence … in support of their assertions. They need only ask the judge to say whether these facts exist or not, and if the judge's own knowledge will not help him, then he must look the matter up; further the judge can, if he thinks [it] proper, call upon the parties to assist him. But in making this investigation the judge is emancipated entirely from all the rules of evidence laid down for the investigation of facts in general. He may resort to any source of information which he finds handy and which he thinks will help him. Thus he may consult any book or obtain information from a bystander.

24 In the present case, the matter which the District Judge took judicial notice of (*viz*, the decreased likelihood of injury if the Appellant had adopted the scaffold position at the material time, and, conversely, the increased likelihood of injury associated with the straddling position) certainly does not fall within any of the categories of matters which are ordinarily judicially noticeable under s 59(1) of the EA. That, however, is not the end of the story. While the EA is silent as to which matters falling outside ss 59(1) and 59(2) are judicially noticeable, the EA's silence in this regard should not be construed as precluding the court from taking judicial notice of such matters. Sir Stephen himself unhesitatingly acknowledged in Note XI to Art 61 of *Stephen's Digest* ([21] *supra*) that it would be "practically impossible to enumerate everything which is so notorious in itself ... that it would be superfluous to prove it" (see [22] above). Therefore, recourse to the common law to fill up the gaps in the EA is permissible in this regard. However, this option of having recourse to the common law should be exercised warily and only after careful consideration, given that the concept of judicial notice is already provided for in the EA. As Chan Sek Keong CJ observed in *Law Society of*

Singapore v Tan Guat Neo Phyllis [2008] 2 SLR 239 at [117]:

> The EA only codified the law of evidence existing at the time of its establishment; therefore, new rules of evidence can be given effect to only *if they are not inconsistent with the provisions of the EA or their underlying rationale*. However, while the EA is a code, it is acknowledged to be non-exhaustive. Specifically … s 2(2) of the EA [which states that "[a]ll rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of [the EA], are repealed"] demarcates the application of that statute. The EA is exhaustive only to the extent that all the rules which are not saved by statute and which are inconsistent with it (the EA) are inapplicable. However, this is not an unrestricted licence to import 21st century notions of the common law into a 19th century code. [emphasis in original]

In the present case, given the draftsman's clear intention not to provide in s 59 of the EA an exhaustive list of facts of which judicial notice may be taken, it is not inconsistent with the relevant provisions of the EA or their underlying rationale to apply the common law doctrine of judicial notice in determining which matters outside the confines of ss 59(1) and 59(2) are judicially noticeable.

The common law position

25 At common law, the matters which the court *may* take judicial notice of are summarised in *Woodroffe & Ali* ([23] *supra*) at p 2720, as follows:

> The field of discretionary judicial notice covers: (a) specific facts so notorious as not to be the subject of reasonable dispute; and (b) specific facts and propositions of generalised knowledge which are capable of immediate accurate demonstration by resort to easily accessible sources of indisputable accuracy.

26 In *Phipson on Evidence* (Hodge M Malek gen ed) (Sweet & Maxwell, 16th Ed, 2005) ("*Phipson*") at para 31-02, the author observes:

> [T]he concept [of judicial notice] covers matters being so notorious or clearly established or susceptible of demonstration by reference to a readily obtainable and authoritative source that evidence of their existence is unnecessary. Some facts are so notorious or so well established to the knowledge of the court that they may be accepted without further [i]nquiry. Others may be noticed after inquiry, such as after referring to works of reference or other reliable and acceptable sources.

27 From the above extract, it can be seen that, apart from the matters listed in s 59 of the EA, there are two categories of facts of which judicial notice may be taken. The first category consists of facts which are so notorious or so clearly established that they are beyond the subject of reasonable dispute; the second category comprises specific facts which are capable of being immediately and accurately shown to exist by authoritative sources. In respect of the former category, a fact is considered notorious or clearly established if (see *Sarkar* ([23] *supra*) at p 1133):

> … its existence or operation is accepted by the public without qualification or contention. The test is whether sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof. The fact that a belief is not universal, however, is not controlling, for there is scarcely any belief that is accepted by everyone. Those matters familiarly known to the majority of mankind or to those persons familiar with the particular matter in question are properly within the concept of judicial notice.

2 8 *Halsbury's Laws of Singapore* vol 10 (LexisNexis, 2006 Reissue) rightly notes that a fact of which judicial notice is taken must be of an objective character. This is because (*id* at para 120.267):

> The reason for accepting proof by judicial notice is not so much that the fact is well known or that it is indisputable but that the nature of the fact is such that it has an *objective existence independent of the complexion of any individual case* (so that its character is general rather than particular) and its proof is readily available to the court itself. [emphasis added]

29 While the doctrine of judicial notice is very wide and "has great possibilities if intelligently and boldly made use of by a judge" (see *Sarkar* at p 1120), the discretion to take judicial notice of a particular fact should always be exercised with judicious caution. It is not the judge's own personal or peculiar knowledge *vis-à-vis* a fact that is determinative of whether judicial notice should be taken of that fact, but, rather, the public notoriety of that particular fact. The necessary common and general knowledge of the fact in question must exist before judicial notice of it is taken, and "any reasonable doubt should be resolved promptly in the negative" (see *Woodroffe & Ali* ([23] *supra*) at p 2721). The rather obvious reasons for applying measured caution to the doctrine of judicial notice were succinctly stated by the Supreme Court of Canada in *R v Find* [2001] 1 SCR 863, where the court held (at [48]):

> Judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticedare not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict …

30 Our Court of Appeal has likewise previously advocated the adoption of a cautious stance towards the application of the doctrine of judicial notice (albeit in respect of taking judicial notice of a trade custom) in *Plaza Singapura (Pte) Ltd v Cosdel (S) Pte Ltd* [1990] SLR 93 ("*Plaza Singapura*"). In that case, the Court of Appeal overturned the trial judge's decision in *Plaza Singapore (Pte) Ltd v Shizuoka Yajimaya (Singapore) Pte Ltd* [1988] SLR 273 to take judicial notice of a custom asserted by the first respondent ("Cosdel") *vis-à-vis* consignment trade, holding (at 99–100, [11]–[12] of *Plaza Singapore*):

> The argument by counsel [for the appellant], basically, raised two questions: (i) whether the learned judge was entitled in the circumstances to take judicial notice, which he did, that … consignment arrangements were a very common practice in Singapore; and (ii) if he was not entitled to take judicial notice, whether Cosdel, on the material before the court, had discharged the burden of proving the existence of the alleged trade custom … On the first question, the law as to when a court may properly take judicial notice of a trade custom or usage … is summarized in paras 479 and 480 of 12 *Halsbury's Laws of England* (4th Ed):
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> > 479 **Judicial notice of usages.** A commercial or other usage may be so often proved in courts of law that the courts will take judicial notice of it. This is done in order to avoid putting the parties to the unnecessary expense of having to prove, by a large number of witnesses, a usage which has been proved over and over again. As regards the necessity of proof, usages pass through certain stages. There is the primary stage when the particular usage must be proved with certainty and precision; there is the secondary stage when the court has become to some degree familiar with the usage, and when slight evidence only is required to establish it; and there is the final stage when the court takes judicial notice of the usage, and evidence is not required.
> >
> > 480 **Degree of proof of usage.** The courts have not laid down any guiding rule as regards the exact number of times a usage must be proved before judicial notice of it will be taken.

> It would seem that the mere proof and establishment of a valid usage once only does not of itself entitle a person in a subsequent action to dispense with proof of the usage; but, on the other hand, where there are several cases in which the usage has been established, this fact of itself will cause the court to take judicial notice of the usage. The cases must not be contradictory, but must appear to the court to be sufficient to establish that the alleged usage has been frequently proved.

In the instant case, the parties were only at the primary stage and theparticular trade custom or usage alleged by Cosdel had yet to be proved with certainty and precision. Counsel for Cosdel had not cited a single decision of any court in Singapore in which it was held that 'such a trade custom in Singapore more prevalently known as the consignment trade' had been proved to exist. So far as we are aware, such commercial trade custom or usage has not been proved in our courts. In the circumstances, we are of the opinion that the learned judge, with respect, ought not to [have taken] judicial notice of the common practice of consignment trade in Singapore.

31 The requirement of "certainty and precision" (see *Plaza Singapura* at 99, [11]–[12]) applies with no less force to any other fact which is alleged to be judicially noticeable. As such, before taking judicial notice of any fact, the court should carefully consider whether that fact is of the unassailable character stated above (at [25]–[27]). In particular, a judge should be vigilant not to take judicial notice of facts which are peculiar to his own private or personal knowledge or belief (see *Sarkar* ([23] *supra*) at p 1139 and *Phipson* ([26] *supra*) at para 3**I**04). The line between a fact that is known to a judge privately and one that is generally notorious may, admittedly, sometimes be difficult to draw. Where any such difficulty arises, any doubts should, as stated in *Woodroffe & Ali* at p 2721 (reproduced at [29] above), "be resolved … in the negative" and the party seeking to allege the fact in question should be made to prove it. Further, even if judicial notice has been taken of a particular fact in a previous case, it does not automatically mean that judicial notice ought similarly to be taken of that same fact in a later case because the notoriety of such fact may have dissipated with time or the fact may have become obsolete (see *Lazard Brothers and Company v Midland Bank, Limited* [1933] AC 289 at 298). The corollary is also true – *ie*, even if judicial notice was not taken of a particular fact previously, that does not in itself preclude the court from taking judicial notice of that fact in a later case. Whether a fact is sufficiently notorious or clearly established to be judicially noticeable is to be tested against the *prevailing* state of knowledge at the time the court is asked to take judicial notice of that particular fact.

32 To illuminate the application of this unique genre of evidential "proof", it may be helpful at this juncture to set out some previous instances where our courts have taken judicial notice of facts. There are in fact numerous examples to be found in local cases, of which the following are but a handful:

(a) In *Tay Joo Sing v Ku Yu Sang* [1994] 3 SLR 719, the Court of Appeal took judicial notice of the fact that (at 730, [27]):

> [I]n 1987 Singapore was getting out of [a] recession and … by 1989 the country's economy had recovered to a considerable extent and prices of landed properties had gone up …

(b) In *Caterpillar Far East Ltd v CEL Tractors Pte Ltd* [1994] 2 SLR 702, this court took judicial notice of the fact that "[f]or over a century Singapore ha[d] thrived as a free port and busy trading centre for all kinds of goods within the region" (at 707, [14]).

(c) In *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd* [2007] SGHC 50, the trial judge took judicial notice of the fact that (at [42]):

> [T]he Thai baht has appreciated by about 20% between 15 February 2002 (*ie*, the date of breach) and [2007] (the Thai baht has appreciated from THB43.5 to one US dollar as at 15 February 2002 to THB34.8 to one US dollar as at 31 January 2007).

(d) In *Shell Eastern Petroleum (Pte) Ltd v Chuan Hong Auto (Pte) Ltd* [1995] 3 SLR 281, the High Court took judicial notice that "there [were] a few other oil companies operating service stations and offering some measure of competition" to the plaintiff (at 292, [22]).

33 The facts in the examples set out in the preceding paragraph clearly satisfy the strict test of notoriety as they would be considered by all to be factually incontrovertible. Specifically, the facts in examples (a), (b) and (d) are of such a nature that no member of the public would reasonably dispute those facts, while example (c) concerns a fact that may be easily and accurately established by reference to a readily-available variety of unimpeachable sources. However, I would hasten to reiterate that the foregoing examples should not be construed as a licence for counsel to presumptuously (or, one might even say, optimistically) rely on the doctrine of judicial notice to fill up evidential gaps in their cases. This is especially since, as highlighted above (at [29] and [31]), any doubt as to the public notoriety of any fact which is alleged to be judicially noticeable ought as a general rule to be resolved against the party seeking to rely on that fact.

My analysis of the District Judge's approach

34 Returning to the facts of the present case, I do not see how, by any stretch, judicial notice could ever have been taken of the particular matter in controversy, *viz*, the decreased likelihood of injury if the Appellant had adopted the scaffold position at the material time and, conversely, the increased likelihood of injury associated with the straddling position (see [18] above). Whether or not a worker who performs the sort of dismantling work carried out by the Appellant at the material time is less likely to be injured if he adopts a particular standing position is certainly not something that can be considered notorious or clearly established. Further, the so-called "fact" that the District Judge took judicial notice of cannot by any reasonable standard of evidential proof or inference be said to have an objective character (see in this regard [28] above). Indeed, the Appellant argued in this appeal that the straddling position was actually the better position to adopt as it gave him better balance and made it easier for him to lift the metal formworks to the top level of the scaffold. Whether or not the Appellant's argument is correct is a matter that ought to have been put to strict proof. The District Judge ought to have ultimately decided this question based on the actual evidence before her. In addition, the resolution of this question of fact (*ie*, whether a worker would be more or less likely to be injured if he adopted a particular standing position while at work) would likely require specialist medical evidence on the forces impacting different muscle groups of the body and the body's susceptibility to injury when a force of a particular magnitude is applied or received at a particular muscular angle or position; yet, no such evidence was called at the trial. Indeed, it would not be at all surprising if different medical experts were to arrive at altogether different conclusions on these matters due to the myriad of muscular permutations and individual physiologies that could potentially be involved. Quite simply, in the present case, it could not be said with any degree of certainty or conviction, on the basis of the evidence available at the trial, whether the straddling position was more likely to cause back injury to any individual (let alone the Appellant in particular) and, conversely, whether the scaffold position was less likely to cause such injury. In short, it was not correct for the District Judge to take judicial notice of a fact that was not "generalised knowledge" (*per Woodroffe & Ali* ([23] *supra*) at p 2720), or that could not be deemed to be sufficiently notorious or clearly established. In deciding this appeal, I did not (and, indeed, could not) determine on the available evidence whether one standing position was more likely to cause injury than the other. I did, however, conclude, contrary to the District Judge's view (see [14] above), that the Respondent had not proved that the Appellant's injury was caused or contributed to by the

Appellant adopting an incorrect standing position while he carried out his assigned task of dismantling the metal formworks from the Wall. I also allowed this appeal on another ground, *ie*, the Respondent was in breach of its duty to provide the Appellant with a safe system of work, to which issue I now turn.

Did the Respondent breach its duty to provide a safe system of work?

The employer's duty to provide a safe system of work

35 As alluded to in the preceding paragraph, having found that the District Judge ought not to have taken judicial notice of the premise that the risk of back injury would have been reduced if the Appellant had adopted the scaffold position at the material time, it remained for me to consider whether or not the Respondent had provided the Appellant with a safe system of work. In explaining my decision on this issue, I will bifurcate the discussion. First, I will discuss the content of an employer's duty to provide its employees with a safe system of work; I will then apply the law to the facts of this case and examine whether the Respondent had breached its duty in this regard.

36 It was not in dispute before me that an employer has a duty to its employees, at common law, to provide "a competent staff of men; adequate material; and a proper system and effective supervision" (see *Parno v SC Marine Pte Ltd* [1999] 4 SLR 579 ("*Parno*") at [45]). What was disputed between the parties was the content of the third limb of an employer's duty, namely, whether the Respondent was in breach of its duty to provide the Appellant with a proper system of work. I should, at this juncture, point out that, although the District Judge framed this particular aspect of an employer's duty in terms of a "*safe* system of work" [emphasis added] (see the Judgment at [28]), as opposed to a "*proper* system of work" [emphasis added] (see *Parno* at [46]), the two words – *viz*, "safe" and "proper" – are synonymous in the context of the present appeal.

37 The scope of an employer's duty to provide a proper system of work was set out by the Court of Appeal in *Parno* at [46] and [48], as follows:

> 46 For the purpose[s] of this case, the aspect of the duty which was in issue was that [relating to] a proper system of work. The employer must devise a suitable system and instruct his men in what they must do: see *Pape v Cumbria County Council* [1992] 3 All ER 211. In devising a safe system, the employer should be aware that workmen are often careless for their own safety, and his system must, as far as possible, reduce the effects of an employee's own carelessness: see *General Cleaning Contractors Ltd v Christmas* [1953] AC 180 at pp 189–190 per Lord Reid. The employer must also take reasonable care to ensure that his system is complied with, but he is not obliged 'to stand over workmen of age and experience at every moment they are working … to see that they do what they are supposed to do': see *Woods v Durable Suites Ltd* [1953] 2 All ER 391 at p 395C; [1953] 1 WLR 857 at p 862 per Singleton LJ.
>
> …
>
> 48 … The employer is responsible for the general organisation of the factory or undertaking; in short, he decides the broad scheme under which the premises, [the] plant and [the] men are put to work. This organisation or 'system' includes such matters as coordination of different departments and activities; the lay-out of plant and appliances for special tasks; the method of using particular machines or carrying out particular processes; the instruction of apprentices and inexperienced workers; and the general conditions of work: see John Munkman, *Employer's Liability at Common Law* (1985) at pp 131–132. …

38 From this passage, it can be seen that the duty on the part of an employer to provide a safe system of work is twofold. First, the employer must take the employee's carelessness in relation to safety into account when *devising* a safe system of work. Having devised such a system, the employer needs to take *reasonable* care to ensure that the system is complied with. This includes checking to ensure that the system which it has put in place is complied with by its employees (see *Parno* at [46] and [54]).

39 As mentioned earlier (at [36] above), the present appeal turned essentially on whether the Respondent had devised a safe system of work for the Appellant. The Appellant argued that no safe system of work had been devised as no instructions had been given by the Respondent as to how the manual removal of the metal formworks should be carried out. The Respondent, on the other hand, argued that a safe system of work had already been put in place at the material time in the form of the method that the Appellant and Liu had previously devised on their own for manually removing metal formworks from a wall. In support of its contention, the Respondent relied on the High Court cases of *Gaughan v Straits Instrumentation Pte Ltd* [2000] 2 SLR 457 ("*Gaughan*") and *Chua Ah Beng v C & P Holdings Pte Ltd* [2001] 3 SLR 106 ("*Chua Ah Beng*"), in both of which the defendant employer was held not to be liable even though it had not given direct instructions to the plaintiff employee, who had subsequently been injured while working.

40 In *Gaughan*, the plaintiff, a supervisor, injured his back after allegedly lifting a 186kg radar antenna with three other workers. The plaintiff had been tasked to supervise some modifications to the mast of a vessel ("the vessel"), which involved removing the said radar antenna from the mast. The plaintiff alleged that he had lifted the radar antenna to adjust its position after it had been moved into the wheelhouse of the vessel for storage and had suffered a back injury in doing so. The judge found that the plaintiff's employer ("the second defendant"), which was also the owner of the vessel, was not liable for the plaintiff's injury as (see [59] and [66] of *Gaughan*):

> 59 ... [T]he plaintiff was not specifically ordered to participate in the lifting operation [*ie*, the operation to remove, *inter alia*, the radar antenna from the mast of the vessel]. His instructions were to oversee the move and ensure [that] no damage was caused to the equipment. The persons who were to undertake the move were the first defendants [*ie*, the sub-contractors appointed by the second defendant]. …
>
> …
>
> 66 An employer is only required to take reasonable care and to [guard] against foreseeable risk to his employee. The master [of the vessel] did not consider that there was any risk posed to the plaintiff in *supervising* the operation. He did not foresee that the plaintiff would get himself involved in a physical operation which had been contracted out to independent third party contractors [*ie*, the first defendants].
>
> [emphasis added]

In particular, the judge held (*id* at [62]):

> Whilst the employer has the primary obligation of organising work, when an isolated task is involved, whether the obligation of organisation falls on the employer or the employee whom he has designated to do the task depends on whether the operation is so complicated or unusual as to necessitate special organisation outside the scope of that employee's expertise.

41 In *Chua Ah Beng*, the plaintiff, a crane operator, suffered injuries when he fell off a crane while

carrying out a routine inspection of its engine; specifically, the plaintiff fell off the crane as he was replacing a cover on the platform of the crane after checking the crane's oil levels. The judge found that the task of opening and closing the covers on the platform of the crane was a "simple operation" (*id* at [35]), and that the routine inspection which the plaintiff had been asked to carry out was one that an experienced crane operator (as the plaintiff was found to be) was able to carry out "without instruction or supervision" (*id* at [31]). This led the judge to stress that (*id* at [32]):

> It is not the law that an employer must give instructions on every aspect of his employee's work. Recognition must be given to the [latter's ability] to … carry out some work himself relying on his own experience and judgment.

42 In my view, both *Gaughan* ([39] *supra*) and *Chua Ah Beng* ([39] *supra*) are not inconsistent with an employer's general duty to provide a safe system of work as stated above (at [38]). The duty imposed on the employer is to devise a *safe* system of work. In coming up with a safe system of work, the employer is entitled to take into account various factors, including the employee's experience, the employee's job scope and any safety considerations that may arise. Thus, for the purposes of deciding whether or not an employer has devised a safe system of work, each case must turn on its own facts as different cases involving different occupations and/or different worksites must necessarily give rise to different considerations.

43 Both *Gaughan* and *Chua Ah Beng* can be quite easily distinguished from the present case. Here, it was foreseeable that the Appellant would engage in physical work; indeed, this was the type of work which the Appellant had been explicitly instructed by his foreman to carry out. This point alone is sufficient to distinguish this case from *Gaughan*, where the plaintiff had merely been asked to *supervise* physical work and not to *participate* in such work himself. In addition, the removal of the metal formworks here, unlike the crane inspection which the plaintiff in *Chua Ah Beng* was asked to carry out, was not a simple and routine operation. The task of dismantling the metal formworks from the Wall would ordinarily have been carried out using a crane, but that method could not be used in this case because of the location of the Worksite. Thus, the Appellant and Liu had to remove the metal formworks manually and in individual pieces instead, a task that was physically demanding and not at all simple and routine (unlike the plaintiff's task in *Chua Ah Beng*). The judge's observations at [32] of *Chua Ah Beng* (reproduced at [41] above) must, therefore, be read in the light of the operation which the plaintiff in that particular case was carrying out when he sustained his injury (which operation the judge found to be simple and routine). In my view, in assessing whether an employer has breached its duty to provide its employees with a safe system of work, only those case precedents which involve facts that are very similar or analogous to the facts of the particular case before the court can be of any assistance. Counsel ought to be mindful of this guiding principle, *viz*, the different considerations which come into play in each individual case *vis-à-vis* whether an employer has provided its employees with a safe system of work, when citing authorities in support of their clients' cases.

44 With this in mind, I proceed to consider whether, on the facts of the present case, the Respondent was in breach of its duty to devise a safe system of work.

Whether the employer's duty to provide a safe system of work was breached in the present case

45 The Respondent strenuously denied that it had breached its duty to provide the Appellant with a safe system of work, arguing that the latter had unilaterally varied a safe system of work that was available. In assessing the merits of the Respondent's argument, the entire factual matrix of this case must be considered. As mentioned earlier (at [4] and [43] above), the removal of the metal formworks

from the Wall would ordinarily have been carried out using a crane, but that method could not be used at the material time. Thus, two construction workers (*viz*, the Appellant and Liu) were instructed to manually remove the metal formworks from the Wall late in the day, at about 6.10pm. Presumably, the Appellant and Liu had by then worked for most of the day already. It was more than probable that they had also been under time pressure to complete the dismantling work before the sky turned dark. By the time the Appellant suffered his injury, he had already lifted and thrown about 30 metal formworks, each weighing between 30kg and 35kg. Quite literally, the Appellant had lifted and thrown approximately one tonne of metal formworks in a space of about 40 minutes before suffering his injury. At the hearing before me, counsel for the Respondent conceded that the work which the Appellant was carrying out at the material time was strenuous work. Indeed, such work was back-breaking in every sense of the word; it was extremely demanding physical work. Lamentably, such work did indeed "break" the Appellant's back.

46 It is important to note that, while two workers (*ie*, the Appellant and Liu) were tasked with dismantling the metal formworks manually, it was the worker in the Appellant's position (*ie*, on the top level of the scaffold) who had to bear the brunt of the physical work. After Liu had moved to a lower level of the scaffold, his task was limited to prising part of each metal formwork away from the Wall and attaching a hook to the metal formwork. The Appellant then had to completely dislodge the metal formwork from the Wall using the hook, hoist the metal formwork to the top level of the scaffold and throw it through the gap in the Wall, all three of which were activities that required considerable physical exertion. The Appellant also had to carefully manoeuvre the metal formworks along the gap of about 40cm to 60cm between the scaffold and the Wall so as to prevent the metal formworks from hitting the scaffold.

47 Despite the back-breaking nature of the dismantling work, only two workers were assigned to carry it out. I cannot see how a reasonably prudent employer in the Respondent's shoes, taking its employees' safety into account, can argue that it had provided the Appellant with a safe system of work in these circumstances, considering the Respondent's failure to give the Appellant and Liu any precise instructions whatsoever as to how the metal formworks should be removed manually as well as the Respondent's failure to provide more workers to assist the two men. Quite plainly, the work which the Appellant was carrying out at the material time was not work that was meant to be done by only one person stationed at the top level of the scaffold, taking into account the nature and the physical demands of such work. By assigning only two workers to carry out the physically demanding task of removing the metal formworks from the Wall manually and, further, by omitting to give the workers any instructions, the Respondent appeared to have placed cost considerations above safety concerns (even though the latter ought to have been paramount), and, in my view, breached its duty to provide the Appellant with a safe system of work.

Was the Appellant contributorily negligent *vis-à-vis* his injury?

48 I now turn to the question of whether there was any contributory negligence on the part of the Appellant which led to his injury. This issue can be easily dealt with. The thrust of the Respondent's argument in this regard was that the Appellant had been contributorily negligent in unilaterally varying what the Respondent contended was a safe system of work in so far as the Appellant had adopted the straddling position instead of the scaffold position while lifting the metal formworks to the top level of the scaffold. I have already found that the system of work devised by the Respondent was not a safe system of work (see [47] above). In addition, I earlier ruled that the District Judge was wrong to take judicial notice of the premise that the Appellant would have been less likely to injure his back if he had adopted the scaffold position instead of the straddling position at the material time; I also noted that no proof had been adduced to show that a worker who adopted the straddling position while doing the type of work carried out by the Appellant was more likely to injure his back as

compared to a worker who adopted the scaffold position (see [34] above).

49 In deciding whether or not the Appellant was contributorily negligent *vis-à-vis* his injury, I drew guidance from *Parno* ([36] *supra*), where the Court of Appeal stated (at [64]):

> Courts have generally been reluctant to hold an employee to be at fault if his actions were taken in the heat of the moment following an emergency created by the employer's carelessness. Courts would also be slow to scrutinise to the minute detail the conduct of a conscientious employee as the primary responsibility for ensuring safety rests with the employer. Additionally, the fact that the [employee] had to take a risk does not amount to contributory negligence on his part if the risk were created by the negligence of the [employer] and was one which a reasonably prudent man in the [employee's] position would take. Broadly, it would seem that employees have more often than not been judged by less exacting standards than employers. … [I]t is also clear that mere errors of judgment do not ordinarily count against [an employee], for a person's conduct in the face of sudden emergency cannot be judged from the standpoint of what would have been reasonable in the light of hindsight. To this end, courts often draw a distinction between mere heedlessness or errors of judgment on the one hand, and culpable neglect on the other.

50 Given that the Respondent had not devised a safe system of work to begin with, it was not open to it to argue that the Appellant was at fault for adopting the straddling position instead of the scaffold position while he was lifting the metal formworks to the top level of the scaffold. As stated in *Parno* at [64] (see the quotation reproduced in the preceding paragraph), the primary responsibility for ensuring safety rests with the employer, not the employee. In the present case, it must be remembered that the manual removal of the metal formworks from the Wall was an extremely demanding task in physical terms, especially for the Appellant, who was stationed at the top level of the scaffold. I have also noted that the Appellant was likely to have been under time pressure and would have sought to complete the task as efficiently as he could (see [45] above). Indeed, even Liu, while under cross-examination, stated that he had been reluctant to remove the metal formworks manually and that, for the purposes of dismantling metal formworks manually, it would be easier to adopt the straddling position. It was not the case that the Appellant took a risk by adopting the straddling position even though he knew or ought to have known that it was more likely to cause injury as compared to the scaffold position. As I pointed out earlier, there was no evidence to show that a worker doing the type of work carried out by the Appellant at the material time was more likely to injure his back if he adopted the straddling position as opposed to the scaffold position. The Appellant thus cannot be held responsible for any part of his injury. Even assuming that there was evidence to support the proposition that the straddling position was associated with an increased risk of back injury (and there was, as I have just reiterated, no such evidence), I would hold that the Appellant's conduct fell within the realm of "[error] of judgment" (see *Parno* at [64]) rather than "culpable neglect" (*ibid*), and therefore did not amount to contributory negligence.

51 I would hasten to add, however, that this is not to say that an employee can never be found to be contributorily negligent when his employer has been remiss in its duty to provide a safe system of work. One can readily think of instances where the action undertaken by the employee is so reckless or in such total disregard for his own safety that he ought to be held liable for and/or contributorily negligent *vis-à-vis* his resultant injury. A possible example would be where an employee gets involved in a fight with his fellow employees and engages in retaliatory destructive acts (see, *eg*, the fact situation in *China Construction (South Pacific) Development Co Pte Ltd v Shao Hai* [2004] 2 SLR 479). The court will, in the final analysis, take a common-sense approach in assessing the culpability (if any) of an employee *vis-à-vis* an injury which he has suffered while working in cases where his employer itself has been found wanting.

52 In reversing the District Judge's decision, I was mindful of the Court of Appeal's guidance in *Parno* ([36] *supra*) at [69], as follows:

> An appellate court should not, in cases of contributory negligence, normally interfere with the discretion exercised by the trial judge. However, it is nevertheless open to the court to do so where there has been a substantial misappreciation of the factual basis of apportionment. Hence, where the appellate court is satisfied that the assessment made by the trial judge was plainly incorrect or that some very material aspects of the evidence of either party should have been rejected or accepted by the trial judge, having regard to his findings [on the] credibility of the witnesses, the court may reassess the apportionment: see *Stapley v Gypsum Mines Ltd* [[1953] AC 663] … where the trial judge's apportionment was altered by the [English] Court of Appeal.

53 In the present case, the ruling by the District Judge that the Appellant had been contributorily negligent was dependent on two factors, namely:

> (a) her decision to take judicial notice of the lower risk of injury associated with the scaffold position, which pointed to negligence on the Appellant's part in adopting the straddling position instead at the material time; and
>
> (b) her finding that the Respondent had provided the Appellant with a safe system of work.

As I reversed the District Judge's decision in both of these respects, there was no basis which could sustain a finding of contributory negligence on the Appellant's part. Quite plainly, there was no reason for the Appellant to believe that the adoption of the straddling position (as opposed to the scaffold position) was more likely to result in his suffering a back injury, and, accordingly, I ruled that he could not be held legally blameworthy for his conduct leading up to his injury.

Conclusion

54 This case should serve as a salutary reminder to all employers in the construction industry that they should never take their workers' safety lightly. To compromise on safety requirements could well turn out to be painful for all concerned, both physically and financially. The injury which the Appellant suffered was one that could easily have been avoided; for instance, the Respondent could have instructed more workers to assist in the manual removal of the metal formworks from the Wall, given that a crane could not be used. When assigning work to its employees, an employer should always be mindful of, *inter alia*, the nature of the work in question, time constraints as well as challenges which might conceivably arise at the worksite; bearing these considerations in mind, the employer should then ensure that it allocates sufficient manpower as well as furnishes the requisite equipment and/or know-how so that its employees can complete their assigned tasks safely. Efficiency and cost will admittedly always be important considerations for an employer, and understandably so. Nevertheless, work safety should not and must not be sacrificed at the altar of expediency. The unfortunate consequences of an employer's oversight may not only permanently impair a worker for life; it could even cost the latter his life. Regrettably, as we discover from time to time, some employers do indeed place efficiency and/or immediate monetary considerations over and above safety concerns. When such errant employers are brought before the court, they should not expect any sympathy or indulgence from the court *vis-à-vis* their liability (if any) for injuries sustained by their employees in the course of work. The employer's predicament in such scenarios is entirely self-induced and any attempts to assign blame to employees – who may have been forced to undertake hastily-assigned and/or inadequately-considered tasks allotted to them – will be given short shrift.

55 In the result, I allowed this appeal. I also awarded the Appellant costs here and below, and

ordered the security deposit to be refunded to him.