Chandran a/l Subbiah v Dockers Marine Pte Ltd
[2009] SGCA 58

Case Number	: CA 21/2009
Decision Date	: 01 December 2009
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Perumal Athitham and P Kamala Dewi (Yeo Perumal Mohideen Law Corporation) for the appellant; Michael Eu Hai Meng (United Legal Alliance LLC) for the respondent
Parties	: Chandran a/l Subbiah — Dockers Marine Pte Ltd

Tort

Employment Law

1 December 2009 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 Accidents involving falls from heights in workplaces appear to be a not uncommon occurrence in Singapore. Several cases involving such accidents have come before the courts in the last few years. It is reasonable to assume from this that many similar cases would also have been settled under the workmen's compensation regime. Propitiously, this appeal has given us an opportunity to clarify the responsibilities employers have when their employees work at heights.

2 In the present proceedings, the appellant claimed damages for personal injuries and consequential losses he suffered while in the employ of the respondent, a stevedoring company. The appellant fell from a height of about ten metres while he was attending to the loading of some cargo containers in the hold of the vessel Tasman Mariner ("the vessel"). As a result, he sustained severe head injuries and continues, as a consequence, to suffer from visual defects, cognitive impairment and headaches. Dissatisfied with the amount of compensation assessed under the Work Injury Compensation Act (Cap 354, 1998 Rev Ed) for no fault accidents, he initiated these proceedings against the respondent, his employer. Soon after being served with the appellant's claim, the respondent successfully included the owners of the vessel ("the ship-owners") as a third party to the present proceedings. However, upon being informed that the ship-owners had "settled" any claim the appellant might have against them, the respondent decided not to pursue the third-party action. Nonetheless, the respondent's position before us was that it could still seek contribution from the ship-owners if it were found liable in any way in the present proceedings. For the avoidance of doubt, we point out that our views expressed here do not in any way address the issue of relative responsibility for this accident as between the respondent and the ship-owners.

Background

Facts of the case

3 The appellant, a Malaysian, worked as a stevedore. He possessed a Singapore work permit, obtained with the support of Asia Stevedore Pte Ltd. However, it appeared that the appellant was, to

all intents and purposes, a freelance stevedore usually engaged on an *ad hoc* basis and compensated on the basis of work actually performed. On this basis, the appellant frequently worked for the respondent. The appellant testified that a stevedoring foreman employed by the respondent would usually contact him directly if his services were required. Other than this, there appeared to be little or no direct contact between the respondent and the appellant. That said, the respondent did not seek to deny that, for the purposes of the appellant's claim, it was the employer of the appellant at the material time.

4 On 18 October 2005, the appellant was instructed by the respondent to report to Port of Singapore Authority ("PSA") Pasir Panjang Wharves for work. Mr Rajendran s/o Pavadai ("Mr Rajendran"), a supervisor employed by the respondent, testified that, on that day, the respondent was the only stevedoring company engaged to work on the vessel. The respondent was tasked to move cargo containers into and out of two hatches located within the vessel: Cargo Hold (Hatch) No 2 ("Hatch 2") and Cargo Hold (Hatch) No 5 ("Hatch 5"). Eight workers were deployed by Mr Rajendran to work in each hatch. The appellant was one of those assigned to Hatch 5.

5 Mr Rajendran, who had overall responsibility for operations that day, testified during the trial, that each hatch could hold up to 100 cargo containers. On that particular day, Hatch 5 was to be loaded with 24 containers and the appellant, along with other co-workers, was instructed to ensure the proper alignment of the cargo containers. The appellant and his co-workers spent the morning of 18 October 2005 preparing for their tasks. This required them to repeatedly enter and leave Hatch 5. They did so via the only means of access available to them – a metal rung ladder hanging vertically alongside the inner hull of the vessel. More precisely, the access route is better described as a continuous chain of ladders placed on top of one another to form a continuous link leading from the deck of the vessel into Hatch 5. Each section of that chain comprised an individual ladder that had been welded at three different points. The very top of each ladder was welded to the hull of the vessel itself while two other, smaller, welded points at the bottom of the ladder attached it to the ladder next in line. By negotiating the chain of ladders all aligned vertically, the workers would gain access to Hatch 5 as well as secure the positioning of the loaded containers.

6 After lunch on the date of the accident, the appellant and his co-workers commenced their actual tasks of loading and unloading cargo containers. We should pause here to point out that Mr Rajendran did not conduct any safety briefings before the work commenced. Soon after work commenced, a "swissloc" had to be adjusted. A swissloc is a twist lock used to secure containers after they have been satisfactorily positioned. As part of the loading process for the cargo containers, swissloc(s) had to be manually fastened and unfastened. In order to adjust a swissloc, the appellant descended, without any safety equipment, into Hatch 5 via the ladders. Unexpectedly, when he was about ten metres from the bottom of the hatch, the ladder which he was on (the "defective ladder") suddenly detached from the hull of the vessel as well as the adjoining ladder below. This caused the appellant to fall onto the top of a single-decked container immediately below. Upon impact, he rolled off the container and eventually fell onto the vessel floor. As mentioned previously, the appellant then sustained severe injuries. After the accident, a loss adjustors' report was obtained by the respondent. Regrettably, this report has not been disclosed in these proceedings though the photographs taken for the report have been made available.

The Judge's decision

7 Before the High Court Judge ("the Judge") the appellant grounded his claim for damages on three planks. The appellant claimed that the respondent had breached:

(a) its common law duty of care as an employer and by its negligence caused the accident;

(b) its common law duty as an occupier of the vessel at the material time; and

(c) its statutory duty under the Factories Act (Cap 104, 1998 Rev Ed) ("Factories Act").

The Judge rejected every one of these grounds. We now briefly summarise the Judge's reasons for deciding against the appellant in respect of the first issue.

8 Addressing the respondent's common law duty of care, the Judge noted that the common law duty of an employer with respect to its employee was generally divided into three categories: to provide a competent staff of men, adequate material and a proper system of work and effective supervision. As we will explain (at [21]–[24]), these categories are merely elements of the employer's overriding duty to take reasonable care for the safety of its employees. However, before the Judge, much time was spent on the purported distinctions between the categories and the appellant's counsel contended that different rules ought to apply to them. Specifically, the appellant argued that an employer's obligation to provide adequate equipment (such as safety belts) for its employees was part of the employer's duty to provide a safe *system* of work (and not a safe *place* of work). Accordingly, the appellant sought to demonstrate that the present case fell within the category of a safe system of work in order to establish liability against the respondent for its failure to provide safety belts. The Judge disagreed. She determined that the present case did not and could not fall under the rubric of the respondent's duty to provide a safe system of work as "[t]he means of entry to the premises cannot constitute the system of work" (see *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2009] 3 SLR 995 ("*Chandran Subbiah*") at [11]). At the highest, the faulty ladder only formed part of the means of access to the work premises. The Judge also disagreed with the appellant's contention that the respondent should have provided an alternative means of access. Her view (*Chandran Subbiah* at [12]) was that:

> [i]t was not wrong or unsafe for the [respondent] to insist that the [appellant] use the method provided by the vessel unless there was some industry practice that the [respondent] had failed to follow. For example, if there had been a practice of having safety belts to lower workers into a hold and the [respondent] failed to provide such safety belts, he could be in breach of the duty to provide a proper system of work. However, this was not the case here. No evidence of such an industry practice was adduced. The danger was the defect in the ladder and that it had not been properly maintained. If any liability was to be imposed on the [respondent] by reason of the defect in the ladder, such liability would arise as a breach of the employer's duty to provide a safe place of work rather than as a breach of its duty to provide a safe system of work.

9 The Judge then turned to address the appellant's argument that the respondent had breached its duty to provide a safe place of work by failing to inspect the work premises. In this regard, the Judge stated that (*Chandran Subbiah* at [13]):

> Indisputably, an employer has a duty to provide a safe place of work to its employees. The issue in this case was, however, whether this duty extended to ensuring that the premises of a third party were safe in the case where the premises was a vessel and the employer and its workers were only invitees with no control over the same.

She then considered the Scottish cases of *Thomson v Cremin* [1956] 1 WLR 103 ("*Cremin*") and *William Durie v Andrew Main & Sons* [1958] SC 48 ("*Durie*"). In her view they stood for the same principle: aside from apparent and obvious defects, a master stevedore does not have a general duty to inspect the vessel, not owned by himself, on which his employees work. On that basis, the Judge decided that "the [respondent] did not have a duty to inspect the premises or the hatch before allowing the workers to perform the task of loading and unloading unless there was some ground of

suspicion" (*Chandran Subbiah* at [23]). In so doing, the Judge declined to follow the cases of *Marney v Scott* [1899] 1 QB 986 ("*Marney*") and *McDermid v Nash Dredging & Reclaimation Co Ltd* [1987] 1 AC 906 ("*McDermid*"). In relation to *Marney*, the Judge felt it had less persuasive value than *Cremin* and *Durie* since the former case was a first instance English decision while the latter cases were decided by higher courts; *McDermid*, on the other hand, was a case dealing with a safe system of work, not a safe place of work (*Chandran Subbiah* at [21]). As such, *McDermid* was held not to be relevant since, according to the Judge, the present case only involved the duty to provide a safe place of work and not a safe system of work. In addition, the Judge also factually distinguished these cases from *Cremin* and *Durie*.

10 Essentially, the Judge's decision with regard to the duty to provide a safe place of work was premised primarily on rather dated Scottish legal precedents. She accepted as applicable in Singapore, without qualification, the approach established in *Cremin* and *Durie*. In addition, she held that on the facts of the instant case, "[t]here was no evidence of any circumstance which would have given rise to any ground of suspicion prior to the commencement of work by the plaintiff and his co-workers" (*Chandran Subbiah* at [23]). Hence, the respondent had no duty to inspect the relevant hatches. Some secondary reasons were also added. One related to causation in that even if a visual inspection was performed, the Judge felt that "no danger would have been discernible" (*Chandran Subbiah* at [20]). The other was based on principle. It was the Judge's opinion that imposing a general duty on stevedoring companies to inspect the vessels their employees work on, even if there were no special circumstances to indicate that the vessel or its fixtures might pose a danger to the stevedores, before allowing operations to commence, would be too onerous for employers (*Chandran Subbiah* at [23]).

11 We will not in these grounds be examining the Judge's reasoning on the second and third issues *apropos* occupier's liability and obligations under the Factories Act as we have decided that the appeal must be allowed in full on the basis that the Judge has erred on issue (a) at [7] above.

Our decision

12 These are our reasons given after consideration of the parties' submissions and the Judge's grounds of decision.

Employer's liability

Overview of the historical development of employers' duty of care and relevance of foreign caselaw

13 An employer may, at common law, be made liable to an employee who sustains an injury in the course of employment in two distinct, but not mutually exclusive, ways. One is through the doctrine of vicarious liability where the employer is made liable for the negligence of another employee. This is sometimes called secondary liability. The other route that may be available is if the employer has been personally in default of the non-delegable duty of care to take care of the health and safety of its employees. This type of liability is typically known as employer's liability or primary liability. An employee who has been injured at the workplace because of the negligence of his employer should be mindful that his ability to obtain compensation is not confined solely to a claim in tort: see generally *Labour Law*, (Hart Publishing: 2005, 4th Ed) (at pp 321–323) and *Employment Law*, (Sweet & Maxwell, 2000) (at pp 447–449). Such liability may be contractual, tortious or even based on the breach of statutory duty. However, unlike vicarious liability, the employer's duty of care, while often considered as a discrete topic in many textbooks on negligence, is in substance only one aspect of the tort of negligence and not a discrete or novel head of tortious liability with its own peculiar rules. The significance of the preceding statement is that it acknowledges that ordinary principles governing

the tort of negligence and contract generally also apply to the doctrine of employer's liability. There is, however, one "peculiar" aspect about the doctrine of employer's liability that ought to be underscored. It is unnecessary to establish, in each case, the existence of a duty of care. Such a duty is imposed on an employer as soon as the employment relationship is established.

14 As the common law notion of primary liability incrementally evolved, it was often framed negatively, suggesting that the employer's duty was merely not to expose his employees to 'unnecessary' or 'unreasonable' risk: see *Hutchinson v York, Newcastle, and Berwick Railway Company* (1850) 5 Exch 343. This wary approach must be understood in the historical context of the English common law's original deep-seated antipathy towards servants who were regarded as having an abased status and therefore undeserving of full legal protection. It bears mention that until the late 19th century, case law and statutes in England usually referred to employees as servants and the term 'employee' only became the norm in the middle of the 20th century. The harshness of the common law towards employees is perhaps best illustrated by its long-standing recognition of three defences which severely curtailed the effectiveness of the already limited doctrine of employer's liability. In fact, these developments were so detrimental to the claims of the employee against the employer that they have been described as the "unholy trinity" of defences: see John Cooke and David Oughton, *The Common Law of Obligations*, (Butterworths, 2000, 3rd Ed) at p 596. These defences were the doctrines of common employment, voluntary assumption of risks and contributory negligence. The judge-made rule of common employment prevailed between 1837 and 1948, until it was finally abolished by legislation[note: 1] and prescribed that an employer could not be held vicariously liable for injuries sustained by an employee caused by the negligence of a fellow employee. The English judges frequently justified the existence of this rule by declaring that an employee accepted the risk of danger from co-employees and therefore had a personal obligation to mind his own safety. The doctrine of voluntary assumption of risk (*volenti non fit injuria*) was even more far-reaching in that it applied to *both* negligent acts committed by a fellow employee as well as an employer. This doctrine was based on the fiction that by remaining at work, the worker was taken to have accepted all risks involved in his employment. As such, an employer could not be held responsible for any injuries caused to the employee during the course of his employment. Finally, the doctrine of contributory negligence, as understood in the 19th century, afforded an employer a *complete* defence against any claim brought by an employee until it was reformed vide s 1(1) of the Law Reform (Contributory Negligence) Act 1945. As long as an employer could show that the employee was also negligent to some degree and contributed to the harm caused, the employer would be completely exonerated. In essence, the judicially restricted scope of employer's primarily liability in the 19th century and the early 20th century as well as the powerful defences afforded to employers denied the employee appropriate protection for his safety and health at work. The demise of this harsh approach of the common law towards employees was only decisively sowed in the landmark case of *Wilsons & Clyde Coal Company, Limited v English*, [1938] AC 57 ("*Wilsons*"), which astutely attempted to sidestep the hard doctrine of common employment by expanding the scope of primarily liability. In uncharacteristically blunt language, Lord Wright described the rule on common employment as "stated, with little regard to reality or to modern ideas of economics or industrial conditions …" (at [80]). Lord Wright then restated the test for primary liability in the following lucid words (at [84]):

> [T]he whole course of authority consistently recognises a duty which rests on the employer and which is personal to the employer, to take reasonable care for the safety of his workmen, whether the employer be an individual, a firm or a company, and whether or not the employer takes any share in the conduct of the operations.

More recently, Swanwick J, more fully, and with powerful lucidity, described the duty of an employer to secure the safety of its employees in *Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd* [1968] 1 WLR 1776 (at [1783]), as follows:

> [T]he overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know … [W]here he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risks in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probably [*sic*] effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent.

15 This pithy summary has since been approved by the House of Lords in *Barber v Somerset County Council* [2004] 1 WLR 1089 at [1109]–[1110]. Today, it is trite, for convenience to say in an abbreviated way, that "*[t]he common law requires employers to take reasonable care for the safety of their employees*" in all the circumstances of the matter: see *Araveanthan v Nippon Pigment (S) Pte Ltd* [1992] 1 SLR 545 (at [15]). This is the golden rule from which all other specific duties in relation to an employer's obligations to its employee spring from. Hereafter, in this judgment, for the avoidance of doubt, all further references made by us to the so called golden rule are to this particular formulation of principle.

16 We have briefly sketched the glacial development of the common law towards employee welfare to caution courts here against placing undue reliance on older Commonwealth case law when evaluating the current scope of the golden rule in Singapore. Many of the fine dialectical nuances on the law of employer responsibility (or the lack thereof) evident in older English authorities are a historic legacy of the "unholy trinity" of defences and stem from the former judicial aversion towards extending employer responsibility for the welfare of workers who were viewed collectively as an abased class. In addition, with the increase in knowledge of prevention or reduction of risks of injury to workmen, earlier cases often become an unreliable guide to what will be expected of employers today: see Barry Cotter and Daniel Bennett (gen ed), *Munkman on Employer's Liability* (Butterworths, 14th Ed, 2006) ("*Munkman*") (at para 4.60). Present day community attitudes towards worker safety have also undergone a sea change in keeping with the progressive evolution of work-related behavioural norms and societal expectations in Singapore. It must be appreciated that what might have been acceptable commercial and social practices *vis-à- vis* employees decades ago may no longer be considered acceptable today. Further, tort cases decided prior to *M'Alister (or Donoghue) (Pauper) v Stevenson* [1932] AC 562, which belatedly placed the law of negligence on a firm footing, will also need to be carefully reassessed for conceptual soundness. For coherence and relevance, the common law in this area of employers' duties and responsibilities to their employees has to conform to the prevailing needs and contemporary values of society. Legal obligations and standards in the workplace must therefore now be determined in the light of the prevailing regulatory framework, current work safety attitudes, and advances in knowledge and improvements in technology as well as community expectations. There has undoubtedly been a marked change in the social climate towards ensuring that there are adequate safety standards in the workplace, particularly in the last decade or so, and this must be considered in evaluating an employer's duty of care in any particular situation. There is one further caveat we should add. Even if current case law from foreign common law jurisdictions may appear relevant, each such decision that is being relied on must, nevertheless, be carefully scrutinised and evaluated to ensure that it was not based on policy considerations peculiar to the times and the place concerned, social mores or regulatory circumstances that might not be applicable to Singapore. We have thought it important to make these general observations because in this case, a determination had been made on the basis of what we consider to be an outdated Scottish approach to a particular industry (stevedoring) without regard to contemporaneous local circumstances and societal attitudes to the importance of safety considerations at work. This approach has failed to keep in step with the progressive evolution of the law on employer

responsibilities in general.

Scope of the golden rule

17 A distinctive feature of an employer's duty of care to his employees for their safety is that it is *personal* and therefore *non-delegable*. This means that the employer cannot escape liability simply by baldly asserting that another party was negligent and responsible for the employee's injury. The House of Lords in *McDermid* is instructive for its clarification of the scope of this particular duty. *McDermid* expanded the scope of the non-delegable duty beyond the provision, and to the *operation*, of a safe system of work. In that case, the claimant employee was hired as a deckhand by the employer. In the course of his employment, he worked on board a tugboat owned by a Dutch company, under the control of a Dutch captain employed by the Dutch company. The employee's duties was to untie ropes and thereafter, when it was safe for the captain to move the tugboat, to give a double knock with his hand on the wheelhouse as a signal to the Dutch captain. In one particular instance, the captain moved the tugboat before the employee provided the agreed upon signal. This caused a rope to snake around the employee's leg, pulling him into the water. As a result, the employee suffered serious injury, necessitating the eventual amputation of his leg. In finding for the employee, Lord Hailsham of St Marylebone elaborated on the scope of the "non-delegable" nature of the employer's liability towards his employees (at 910):

> The plaintiff's claim in the proceedings was based on the allegation, inter alia, of a "non-delegable" duty resting on his employers to take reasonable care to provide a "safe system of work": cf. *Wilsons & Clyde Coal Co. Ltd v English* [1938] A.C. 57. The defendants did not, and could not, dispute the existence of such a duty of care, nor that it was "non-delegable" in the special sense in which the phrase is used in this connection. *This special sense does not involve the proposition that the duty cannot be delegated in the sense that it is incapable of being subject of delegation, but only that the employer cannot escape liability if the duty has been delegated and then not properly performed*. [emphasis added]

In similar terms, Lord Brandon of Oakbrook added (at 919):

> Thirdly, the duty concerned has been described alternatively as either personal or non-delegable. The meaning of these expressions is not self-evident and needs explaining. *The essential characteristic of the day is that, if it is not performed, it is no defence for the employer to show that he delegated its performance to a person, whether his servant or not his servant, whom he reasonably believed to be competent to perform it. Despite such delegation the employer is liable for the non-performance of the duty*. [emphasis added]

18 Before us, the respondent's counsel queried the basis for an inflexible application of this golden rule, especially when an employer's workers are sent to work in premises belonging to a third party. He stressed that an employer had little or no control over third party premises. We do not, however, see much force in this submission. Very often today, employees have to work outside their employers' premises. The Judge, unfortunately, considered this issue narrowly from the perspective of stevedores. However, the same issue of working in third-party premises arises in every case where the employer does not own the premises where his workers are deployed to work, *eg*, in building construction and maintenance, shipbuilding and repairing, transportation and storage, metalworking and other manufacturing activities, the marine industry, water, electrical and gas supply, engineering and even support services such as landscaping. The Judge's decision could, on the basis of counsel for the respondent, Mr Michael Eu Hai Meng ("Mr Eu")'s argument, be taken to its logical conclusion to mean that all those activities and services that are performed entirely at third-party premises are not subject to *any* duty on the part of employers to inspect the premises unless there is something

suspicious about the safety of those premises. We are sure this was not what she intended. Once an employment relationship is formed at law, the golden rule, along with its non-delegable feature, is uncompromising but practical. The following summary contained in *Charlesworth & Percy on Negligence* (Sweet & Maxwell, 11th Ed, 2006) ("*Charlesworth & Percy*") expressed (at para [10-31]) correctly sets out the current legal position:

> Despite initial doubts it has been firmly established by the House of Lords that the general duty of an employer to his employee to take reasonable care for his safety does not come to an end merely because the workman has been sent to work at premises which are occupied by a third party and not by the employer. *The duty remains throughout the whole course of this employment*. [emphasis added]

Lord Denning had also with his inimitable clarity condensed the legal position in *Smith v Austin Lifts Ltd* [1959] 1 WLR 100 at 117 thus:

> [E]mployers who send their workmen to work on the premises of others cannot renounce all responsibility for their safety. *The employers still have an overriding duty to take reasonable care not to expose their men to unnecessary risk*. They must, for instance, take reasonable care to devise a safe system of work … and if they know or ought to know of a danger on the premises to which they send their men, they ought to take reasonable care to safeguard them from it. [emphasis added]

19 This much can now be emphatically stated. An employer cannot wash his hands off all responsibility for the safety of his employees simply because the employees are sent to work at a site controlled by others. The law continues to place on an employer an obligation to take reasonable care for its employees' safety. The employee ordinarily has to rely on the employer's decision in relation to matters involving safety of premises, system of work and appliances. He is entitled to expect that an employer has taken reasonable care in evaluating all safety issues before work commences. The scope of that reasonable care will (as we will shortly explain) of course depend very much on the circumstances of each individual case. That the employer may not own or control the workplace or have an opportunity to make a preliminary inspection of the premises are just factors, though often important ones, to be considered in the ascertainment of the standard of care expected of the employer in a particular context. Such factors, however, do not in any substantive way detract from the employer's general duty to take reasonable care for the safety of its employees. In this respect, we respectfully endorse the sentiments of Pearce LJ, expressed in *Wilson v Tyneside Window Cleaning Co* [1958] 2 QB 110 at [121]–[122], as follows:

> **Whether the servant is working on the premises of the master or those of a stranger, that duty is still, as it seems to me, the same; but as a matter of common sense its performance and discharge will probably be vastly different in the two cases**. The master's own premises are under his control; if they are dangerously in need of repair he can and must rectify the fault at once if he is to escape the censure of negligence. But if a master sends his plumber to mend a leak in a respectable private house, no one could hold him negligent for not visiting the house himself to see if the carpet in the hall creates a trap. **Between these extremes are countless possible examples in which the court may have to decide the question of fact. Did the master take reasonable care so to carry out his operations as not to subject those employed by him to unnecessary risk?** Precautions dictated by reasonable care when the servant works on the master's premises may be wholly prevented or circumscribed by the fact that the place of work is under the control of a stranger. Additional safeguards intended to reinforce the man's own knowledge and skill in surmounting difficulties or dangers may be reasonable in the former case but impracticable and unreasonable in the latter. **So viewed,**

> **the question whether the master was in control of the premises ceases to be a matter of technicality and becomes merely one of the ingredients, albeit a very important one, in a consideration of the question of fact whether, in all the circumstances, the master took reasonable care**. [emphasis added]

Standard of care

20 We turn now to address the requisite standard of care expected of an employer. What does the golden rule, being personal and non-delegable, demand from an employer in each case? This question, together with the related issue of whether that standard of care was breached, is usually the fulcrum on which most cases involving employer's liability turn on. In this matter, the respondent, while eventually accepting that it had a broad duty of care to ensure the safety of the appellant, vigorously insisted that its scope was very narrow and, in any case, could not for practical reasons require an inspection of the vessel. We will address this below, at [35]–[41].

21 As stated previously, the general principles established in the tort of negligence apply to the doctrine of employer's liability. Where the standard of care is concerned, the guiding principle is, of course, the standard of a reasonable person: see *Blyth v Birmingham Waterworks* (1856) 11 Ex. 781 *per* Alderson B. In the context of employer's liability, this means that the law will measure the behaviour of any particular employer against the scale of what a reasonable employer in that specific industry, free from over-cautiousness as well as over-confidence, would have observed. The broad constituent elements of this composite standard of care expected of employers may be explained under various broad headings, such as a duty to provide a safe system of work, adequate equipment and adequately skilled workers. For instance, Lord Maugham opined in *Wilsons* (at 86) that:

> there was a duty on the employer to take reasonable care, and to use reasonable skill, first, to provide and maintain proper machinery, plant, appliances and works; secondly, to select properly skilled persons to manage and superintend the business, and, thirdly to provide a proper system of working.

This three-fold categorisation of employer's duties has been accepted by this Court in *Parno v SC Marine Pte Ltd* [1999] 4 SLR 579 ("*Parno*") (at [45]). It can be said that these broad categories are useful guides in fleshing out the standard of care ordinarily expected from employers in most situations.

22 Having said that, however, we should also underscore our concern that attempts to categorise the various standards of care exhaustively may not always be helpful. Such categorisation may result in the commission of at least two separate, but related, errors. The first error is made when attempts are made to classify each case into one of the categories even when it does not fit. The second is when claims which fall outside of the established categories are mistakenly considered as, *ipso facto*, irrecoverable. Both errors arise out of the same incorrect assumption that the categories listed in *Wilsons* are exhaustive. They are not. The learned authors of *Munkman* have perceptively observed (at para 4.48):

> It must be stressed that the duty is not confined to these matters [*ie* the three-fold categorisation]. An employer may, for instance, be under a duty to warn an employee of the risks of employment, something which cannot be readily placed in any of the above categories; nor can the duty to provide medical care (*Kasapis v Laimos Bros* [1959] 2 Lloyd's Rep 378).

Far from being all encompassing or set in stone, the categorisation of employers' duties has in fact been generally acknowledged to be incomplete. For instance, to the classical three-fold

categorisation enunciated by Lord Maugham, a fourth has been recognised as being historically justified: a duty to provide safe premises and access to it (see *Cole v De Trafford (No 2)* [1918] 2 KB 523). For example, *Clerk & Lindsell on Torts*, (Sweet & Maxwell: 19th Ed, 2006) ("*Clerk & Lindsell*") (at para [13.12])) stated, with regard to the case of *Jenner v Allen West & Co Ltd* [1959] 1 WLR 554, that:

> [i]f it is a roof, scaffold or tunnel, the standard of safety to be applied is that of a reasonably prudent employer who provides a roof, scaffold or tunnel at which his men are to work. The failure to provide crawling boards for a risky operation on a roof and reliance solely on the experience of the workman was held to constitute negligence.

Further sub-branches have also since evolved. For instance, under the umbrella of the duty to provide a safe system of work, this court decided in *Parno* (at [48]) that:

> [t]his 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.

A duty to provide a safe system of work requires the employer to take steps to first devise such a system and then to ensure its proper implementation. Conceptually, the four main categories of the golden rule (*ie*, the provision of adequate equipment, adequately skilled workers, a safe system of work and a safe place of work) have usually been kept separate and distinct. However, as we will demonstrate (at [26], below), these categories can overlap.

23 These developments serve to illustrate that the categories of responsibility are not closed. Lord Keith appositely observed in *Cavanagh v Ulster Weaving Co Ltd* [1960] AC 145 at 165 that:

> [t]he ruling principle is that an employer is bound to take reasonable care for the safety of his workmen and all other rules and formulas must be taken subject to this principle.

While this golden rule of care imposed on employers is in itself enduring, what is nevertheless required for its proper discharge may differ enormously in different situations. Relevant considerations in assessing the standard of care expected of an employer include, *inter alia*, the magnitude of the risk of harm, the likelihood of an accident happening, the gravity or seriousness of the consequences of the risk eventuating, and the feasibility and practicality of taking adequate precautions. Hence, any standard to which an employer has been held to in one case must be treated as merely indicative rather than conclusive of the standard expected in another situation.

24 This is not to say that the classical categories of standards of care are not useful. Such categories remain helpful in providing a rational legal architecture to understand the notion of employer's liability and as indicative broad guidelines to employers about their responsibilities. Our point, however, is that the function of such categories should not be overstated and mechanically applied. Such categories, despite often being presented as "duties", are not distinct duties of care owed by employers. Employers essentially only owe a single overarching duty of care to their employees and that is encapsulated by the golden rule.

25 We stress also that the standard of care, while usually articulated in high-flown language, is no more than a commonsense and practical standard framed by the boundaries of reasonableness that require all employers to give appropriate consideration to the safety of their workers in any given work

environment. An employer is, we stress, not to be regarded as an insurer of an employee's safety under any circumstances. The duty to take care is certainly not absolute in nature. An employer is not required to bear the consequences of all risks present at the workplace but merely *such risks as would have been reasonable for the employer to have anticipated and addressed*. Employers who consistently adhere to a culture of work safety are unlikely to find themselves on the wrong side of the safety line drawn by the law. With this general overview as the backdrop, we now turn to examine the factual matrix and the applicable legal principles.

The factual matrix

26 In the present case, we find that the respondent had, in the circumstances, failed to meet two aspects of its duty to take reasonable care for the safety of the appellant. In our view, the respondent should have performed the following but did not do so:

(a) carry out a risk assessment exercise, including inspecting the access to the hatch in question and the defective ladder for signs of danger to its workers, prior to the commencement of work; and

(b) take reasonable measures to minimise the risk of its workers falling from heights by providing safety equipment such as safety belts and safety harnesses.

As we indicated earlier, the Judge had categorised the respondent's obligations in the present case as one falling under the respondent's duty to provide a safe place of work simply because the present case involved a defect in the physical premises of the workplace. She expressed that the means of entry to Hatch 5 cannot constitute the system of work. We do not agree. In our view, if the physical premises are utilised as an integral part of how work is carried (as oppose to merely being the location in which it was carried out), any defect therein may properly result in the employer breaching its duty to provide a safe system of work. It seems to us that such was the case in the present instance as the appellant had used the defective ladder, not merely as a means of entry into Hatch 5, but also as equipment to manoeuvre around the cargo containers. In essence, it can be said the ladder acted as a substitute for a work harness or a winch. In that sense, it can be said that a failure to check for risks in such a work environment could result in the employer breaching both its duty to provide a safe system of work as well as a safe place of work.

27 However, given our earlier explanation that such categories are merely guidelines, the precise categorisation of the respondent's duty in this case, is not crucial. In the final analysis, the most crucial question to be answered is what precautions the respondent could reasonably have been expected to take in this particular case. We will address each of the requirements stated in [26] in turn.

Failure to perform risk assessment

28 Counsel for the appellant, Mr Perumal Athitham, contended that it was reasonable to expect the respondent to ensure that the premises in which it deployed its workers were safe by making a preliminary inspection before work commenced. He relied heavily on the case of *Marney*. That, however, is actually a case involving occupier's liability rather than employer's liability where the charterer, and not the master stevedore employer, was found liable. It is also pertinent that the case was decided in 1899, well before the law of negligence had been securely established in England and Scotland. However, as the broad facts of that case bear some resemblance to the present matter, we ought to explain more fully why we do not think it takes the appellant's case much further. In that case, the defendant chartered a vessel pursuant to a charterparty which contained a representation

that the vessel was in every way fitted for service and that the vessel should be so maintained by the vessel-owners. At the same time, the defendant also contracted with a master stevedore to load cargo onto the vessel when the vessel was delivered. Within two hours of the delivery of the vessel, the plaintiff, a stevedore hired by the master stevedore to load cargo onto the vessel, was directed to go down into the main hold of the vessel. In order to do so, it was necessary to descend a fixed iron ladder. When the plaintiff put his foot on the top rung of this ladder, the rung came adrift causing the plaintiff to fall into the hold and sustain serious injuries. Bigham J found the defendant liable as occupiers of the vessel for the injuries sustained by the plaintiff and held (at [993]) as follows:

> Ought he [the defendant], then, to have known of the condition of the ladder? Here comes in my doubt. I am far from saying and thinking that a man in the position of the defendant is bound, before he allows the work of loading a vessel to begin, to have the vessel surveyed from stem to stern for the purpose of ascertaining that every little appliance that may come into use is in perfect order. Business would be impossible if such a duty were cast upon him, and it would be beyond the scope of reasonable care. **But I cannot help thinking that when a vessel comes into a port after a voyage, though it is only a coasting voyage and though the vessel is in ballast, some slight attention ought to be devoted to the condition of the tackle and appliances which the stevedore's labourers are to use in their work in loading that vessel. What the attention ought to be must depend on the circumstances of each particular case. In this case, I think the defendant ought to have made some examination of the ladders into the holds**. The slightest examination would have shewn [*sic*] him that this ladder was in such a condition as really to make it a trap; and, taking this view, I hold that he was guilty of a breach of the duty which I think the law imposed on him. [emphasis added]

29 Clearly, *Marney* stands for the proposition that occupiers are expected to ensure that their premises are safe by ensuring an inspection of the relevant areas of operation before allowing workers to commence work on them. Like the Judge, we do not think it lends direct support to the appellant's contention that a preliminary inspection by a stevedore employer on a ship is necessary before work commences. It does, nevertheless, offer some tangential support for the view that if a reasonable opportunity for detecting a defect exists, a failure to take advantage of this may result in liability for the employer for an "unusual danger which he knows, or ought to know" (at [990]). Whether the stevedore employer had independent duties and/or liabilities was not considered in *Marney*. That said, it is pertinent to note that Bigham J did not consider that a discrete head of liability, governed by its own special rules and practices, applied to stevedores but instead relied on general principles as summarised in *Pollock on Torts* to ultimately find liability.

30 Another later authority appears to lend firmer support to the appellant's case that employers are obliged to perform a preliminary risk assessment to discharge their obligations under the golden rule. In *Christmas v General Cleaning Contractors Ld* [1952] 1 KB 141 ("*Christmas*"), the English Court of Appeal held that employers are obligated to take reasonable measures to inspect work premises for safety hazards, even when those premises belong to a third party. That case involved the fall of a worker hired to clean the windows of certain premises belonging to a third party. It was argued, on behalf of the employer, that employers who send their employees to work on third party premises have no responsibility for the safety of those premises. Lord Denning roundly rejected that notion. Instead, he held (at 148–149) as follows:

> I cannot agree with that proposition. Until recently many people thought that an occupier was bound to use reasonable care to see that his premises were safe for workmen he invited on to them: but that is no longer true. … If this is so, then I think it must follow that **it is for the employer, who sends his men to the premises, to take reasonable care to see that the premises are safe for the men or else take proper steps to protect the men from the**

dangers to which he sends them. [emphasis added]

On appeal, this decision was affirmed by the House of Lords (*General Cleaning Contracts Ld v Christmas* [1953] AC 180).

31 We find the proposition that employers should undertake a preliminary risk assessment before allowing its employees to commence work reasonable and, indeed, self-evident in principle. Simply put, this means that all employers should ordinarily familiarise themselves with the work environment in which their employees will have to function and ascertain if there are any likely risks that ought to give rise to safety concerns. Since the golden rule calls for an employer to take reasonable care to prevent harm from befalling its workers, it is a logical (and reasonable) extension to expect an employer to take steps to ascertain the existence of such dangers prior to the commencement of work. The fact that the employees may be working in unfamiliar territory makes such a proposition even more compelling. Without such a preliminary risk assessment, it would be difficult, if not impossible, for employers to take positive steps to remedy or address any hazard that may be present at the workplace, a task that it is obligated to perform to satisfy the golden rule. Ordinarily, such an assessment should include a physical inspection of the work premises and equipment to be used. An inspection is usually the quickest and most cost-effective way of accurately ascertaining the presence of potential danger. If conditions do not permit a satisfactory physical inspection, the employer should, at least, satisfy himself as to the working conditions which his employees will engage in by making appropriate inquiries and then assessing what the potential hazards might be. For example, if the workers are to work from heights, the employer is required to consider what safety precautions, if any, are required (see below [58]–[59]) and to test the equipment to be used by its employees.

32 In our view, the duty to undertake a preliminary risk assessment is ordinarily part and parcel of an employer's overriding duty to take reasonable care for the safety of its workers. *All* employers, involved in work that might give rise to safety concerns are generally expected to undertake a pre-work assessment of the risks present at the locations where its employees perform their work.

33 This does not mean that the duty to assess risks is absolute. It is not inconceivable that there may be circumstances where compliance with the golden rule will not require the performance of such a preliminary risk assessment. There may of course also be instances where it would be *unreasonable* to undertake such an exercise. The case of *Cook v Square D Ltd* [1992] ICR 262 ("*Cook*") is a good illustration of such circumstances. That case involved the employment of the plaintiff, an electronics engineer, by the defendant, a company based in the United Kingdom. In the course of his employment, the plaintiff was dispatched to complete the commissioning of a computer control system in Saudi Arabia. Farquharson LJ pointedly described the work the plaintiff performed there as largely sedentary. However, on one particular occasion, when the plaintiff was instructing others on the use of the system, he slipped as a result of a raised tile that had been left unguarded and injured his knee. In finding for the defendant, Farquharson LJ had no doubts that an employer is to take all reasonable steps to ensure the safety of his employees in the course of their employment. However, he felt that the defendant had sufficiently satisfied this obligation by ensuring that the site occupier was a reliable company who was aware of its responsibility for the safety of workers on site. In his view, the sedentary nature of the plaintiff's job and the fact that the work premises were situated far away in Saudi Arabia made it unrealistic to expect the defendant to perform an inspection of the premises. While the circumstances in *Cook* may have made it unreasonable for the plaintiff's employer to inspect the plaintiff's work premises, cases such as *Cook* do not diminish the general applicability of the expectation that employers are to perform a preliminary risk assessment exercise before their workers commence their work.

34 The Judge was particularly impressed by the standing of *Cremin*, a decision of the House of Lords made in 1941, on appeal from the Scottish courts, and *Durie*, a decision of the Scottish Divisional Court made in 1958. Mr Eu, in seeking to uphold the Judge's determination that there was no duty to conduct a preliminary risk assessment, maintained that it was impractical to impose such an obligation where the work was to be performed on third party premises. In addition to *Cremin* and *Durie*, the respondent also relied on the cases of *Hodgson v British Arc Welding Company, Limited and B & N Green & Silley Weir, Limited* [1946] 1 KB 302 ("*Hodgson*"), *Mace v R. & H. Green and Silley Weir Ltd* [1959] 2 QB 14 ("*Mace*"), *Gibson v Skibs A/S Marina and Orkla Grobe A/B and Smith Coggins, Ltd* [1966] 2 All ER 476 ("*Gibson*") and *Shepherd v Pearson Engineering Services (Dundee) Ltd* (1980) SLT 197 ("*Shepherd*"). It is to be noted that, of these cases, only *Cremin*, *Durie* and *Gibson* involved stevedores although all of the cases had to do with accidents taking place on ships. While some of these cases are factually distinguishable, it cannot be denied that the tenor of these cases appears to suggest that, in the absence of special circumstances, there is no general duty on an employer, which may be a stevedoring firm, to inspect a vessel, belonging to a third party, on which its employees are to work. In this regard, it suffices to quote Lord Walker in *Durie* (at [50]) as follows:

> In the recent edition of Glegg on Reparation the law is stated thus (at p. 385): "Where an employer has occasion to use the premises or plant of another, there being no transfer or lease of the property to the employer, the general rule is that there is no obligation on the employer to inspect the property to see that it is in a safe condition and therefore no liability unless he has actual knowledge that the property is unsafe." That statement of the law, in so far as it relates to stevedores engaged in discharging cargo from a ship belonging to third parties, is, I think, amply borne out by the authorities which were cited. …
>
> … Stevedores have no concern to inspect the things forming part of the structure or fittings or fastenings of the ship which are in the vicinity of the place where they have to work. *Accordingly I think that the defenders have made out their contention that they were not bound to inspect the* ***vicinity*** *of the hatchway in order to ascertain whether the fastenings, fittings and structure of the ship were safe or not*.
>
> [emphasis added]

In that case, a dock labourer, working on a ship, sustained injuries when a section of the ship's handrail knocked him down. The section of the handrail in question had earlier been removed and was then propped against the fixed handrail without being lashed to it. The labourer sued his employers, a firm of stevedores, for damages. Lord Walker dismissed the labourer's action at first instance as disclosing no cause of action in law. An appellate court subsequently affirmed the above proposition though the appeal was allowed because the plaintiff had by then amended the claim to allege that the foreman had actual knowledge of the hazard in question. At first blush, the decision appears to directly support the Judge's view that there is no general duty on stevedores to inspect a vessel prior to commencing work. We have found it interesting that Lord Walker had in fact actually taken a more nuanced approach. In arriving at his determination, he had narrowly observed that "*[s]tevedores have no concern to inspect things forming part of the structure … which are in the* ***vicinity*** *of the place they have to work*" [emphasis added]. In short, all he was really stating was that stevedores need not inspect the *vicinity* of the area of work. This is quite different from unequivocally saying that they need not inspect the actual equipment or appliances they will be working with or the actual area of operations.

35 Having carefully considered *Cremin*, *Durie* as well as all the other authorities cited by Mr Eu, we

do not think that the Judge was correct in holding that those involved in offering stevedoring services, as a discrete industry, have no obligations to conduct a preliminary risk assessment through inspections of the area of work. The frequently cited reasons militating against such an obligation to inspect a vessel belonging to a third party may be summarised as follows:

(a) it is not part of the regular practice of stevedoring firms to inspect vessels (see *Cremin per* Viscount Simon LC and Lord Thankerton);

(b) inspection of a vessel is a highly technical matter which stevedoring firms, lacking specialised knowledge, are not capable of undertaking (see *Durie per* Lord Justice-Clerk and *Hodgson per* Hilbery J);

(c) given that its employees are only on board the vessel for a limited purpose and duration, it is not unreasonable for stevedoring firms to rely on the diligence of reputable shipowners (see *Mace per* Lord Parker CJ and *Cremin per* Lord Thankerton); and

(d) a stevedoring firm, generally, has no right to interfere with the structure, temporary or permanent, of the vessel (see *Cremin per* Lord Thankerton).

We have not referred to the cases of *Shepherd* and *Gibson* in (a) to (d).This is because no reasons were provided in *Shepherd* for the determination that there was no general duty of inspection on the part of stevedoring firms other than the fact that "it has already been authoritatively decided" (see *Shepherd* at [201]). The decision in *Gibson* was made on the basis that the stevedoring firm had met the standard of reasonable care and not that there was no duty on the stevedoring firm to make an inspection (see *Gibson* at [479]) and consideration of that decision will therefore not be instructive.

36 As to [35(a)] where industry practice is concerned, it must first be pointed out that no evidence of any corresponding local practice was adduced by either party. In any case, we are of the view that the existence of such a practice, while relevant to ascertaining the standard of care, is not decisive: see Halsbury's Laws of Singapore vol 8 (LexisNexis, 2004 Reissue) at para [240.274] which correctly states:

> What is habitually done in the same or similar circumstances usually furnishes a test of reasonable care, but a person cannot excuse an obvious failure to make some inquiry or take some precaution merely by showing that his failure to do so is in accordance with the established practice in a particular business.

In like manner, *Munkman* unhesitatingly observes at para 2.98:

> General practice has always been taken into account in determining the standard of care but, as noted above (paras 2.88 and 2.103), it is not conclusive, because 'no one can claim to be excused for want of care because others are as careless as himself': per Cockburn CJ in *Blenkiron v Great Central Gas Consumers' Co* (1860) 2 F & F 437.

In our view, even if the local practice of stevedoring firms does not include an inspection of the vessels on which its employees would operate, such a practice cannot be accepted as establishing the appropriate legal standard of duty of care for this industry in Singapore. It will readily be appreciated that the absence of even a basic inspection might unreasonably jeopardise the safety of stevedores. Given the potential injuries to employees of stevedoring companies in working from heights without adequate precautions taken for their safety, we are of the view that such an industry practice, if it exists, should not be countenanced by the law.

37 The contention that the inspection of vessel is a highly technical matter, (see [35(b)]) is too broad a proposition to apply. The real issue must be the kind of inspection required in each case. It is true that some inspections might require real technical expertise that a stevedore might not ordinarily have. However, can it then be stated as a general rule that no inspection is required at all merely because in some assignments technical expertise would be required to conduct such an inspection? In so far as the golden rule is concerned, the duty to inspect only requires an employer to look out for ordinary safety hazards that may endanger the health and safety of its employees. There is certainly no requirement that an employer make an extensive *technical* inspection of the immediate work premises such as the type required to certify that a vessel is seaworthy. Indeed, Bigham J memorably pointed out in *Marney* that there is no need "to have the vessel surveyed from stem to stern for the purpose of ascertaining that every little appliance that may come into use is in perfect order": see [28], above. Such a detailed inspection goes beyond what is necessary to satisfy the requirements of the golden rule. As Bigham J went on to astutely point out, "[b]usiness would be impossible if such duty were cast upon him, and it would go beyond the scope of reasonable care". On the other hand, an inspection of the immediate work areas and operational equipment for ordinary safety hazards is well within the capability of any employer, including a stevedoring company.

38 The other argument frequently made to deny the existence of a pre-work commencement duty to inspect is premised on the fact that employees are often on third-party premises to perform a specific task (such as unloading cargo) and for a limited period: see [35(c)]. It is said that to impose a duty to inspect the entire workplace in such circumstances would be unreasonable and overly onerous. We agree that for the respondent, in the present case, to inspect the entire vessel would be both impractical and unnecessary. This is because the respondent's workers were only employed to perform their duties in a specific area of the vessel (Hatches 2 and 5 and portions of the deck) and only for a short duration. Nevertheless, costs considerations and convenience cannot invariably trump issues of worker safety. The appropriate balance, between safety of employees and business returns, is arrived at, in cases where the employees have to work on third-party premise for a limited period of time and for an exclusive purpose, by requiring the employer to inspect the actual area in which its employees will operate as well as equipment that would be used. Hence, in the instant case, the respondent should have inspected Hatches 2 and 5 and the parts of the vessel deck in which its employee worked as well as physically inspected and tested the ladders. It, however, did not do this.

39 A further reason frequently given for not imposing a general duty of inspection is that the employer has no right to interfere with the structure of the place of work or, more particularly for the purposes of this matter, a vessel: see [35(d)]. That may be so, but this reason is not relevant in the present case. If the respondent here had inspected the ladder and found it unsafe, then requesting or requiring the ship owner to make the ladder safe is not interfering with the structure of the place of work because the ship-owner itself would then have a duty (and interest) to make the structure safe by repairing the defective ladder or providing safety equipment (such as safety hats, gloves or safety harnesses) if the situation requires this. For a court to hold that an employer need not inspect the work premises simply because it has no legal right, without permission from the premise owners, to make changes to the workplace may be to license an abdication of his responsibility as an employer. The golden rule requires that consideration be given as to whether the employees are exposed to work related risks and this obligation can ordinarily only be satisfied if an employer makes a prior inspection of the work site to assess the risk quotient.

40 We find, therefore, that the underlying basis on which the broad proposition that employers need not inspect third-party premises for potential hazards has been premised to be, in the main, indefensible and certainly unpersuasive. This proposition is certainly not in keeping with contemporary notions of employee safety. We are similarly not impressed by the viewpoint that stevedore employers as a class have minimal obligations to secure the safety of their employees. It appears to us that the

teeth of *Cremin* have over time been drawn in different ways: see, for example, *Tsang Hing Cheung v Chan Po Ling Stella and Others* [2002] HKCU 1356. There the Hong Kong High Court pointed out (at [16]), quoting *Winfield on Torts*, 8th Ed (1967), that *Cremin* was "an invitor and invitee case … of limited ambit, and as regards that ambit it was, soon after being brought into the full light, supplanted by section 2(4)(b) of the Occupiers' Liability Act, 1957". Much earlier, in the course of a wide ranging powerful critique of Lord Wright's reasoning in the House of Lords decision, *Davie v New Merton Board Mills Ltd* [1959] AC 604 (at [642]–[646]), Lord Reid penetratingly dismantled the standing of *Cremin*, cuttingly calling it a case with a "curious history" (at [643]). In relation to the issue of employer liability *apropos* stevedores, he drily noted, "*[t]he case was decided in favour of the stevedore because of the limited nature of a master's duty to see to the safety of a servant who is working on another person's premises*" (at [644]). Notably, he did not consider *Cremin* as a decision that was peculiar to the stevedoring industry but rather as evocative of the common law as it stood in 1941 in relation to an employer's duty to its employees if they worked on another's premises. *Munkman on Employer's Liability* (Butterworths: 13th Ed, 2001) when analysing the duty of an employer in relation to operating from third party premises refers *inter alia* to *Cremin* and a few other like cases and deprecatorily notes (at para 5.56):

> To the extent they decide that the employer has no duty to safeguard workers against dangers arising from the state of the premises of third parties, *these cases are inconsistent with the primary nature of the duty of the employer; see eg* Smith v Austin *at 117 per Lord Denning* [emphasis added]

41 Further it appears to us that in adverting to the duties of stevedores in 1941, the House of Lords in *Cremin* appeared to have unquestioningly accepted that an earlier Scottish decision *William M'Lachlan v The Steamship "Peveril" Company, Limited* (1896) 23 R 753 ("*M'Lachlan*"), continued to correctly state the law on stevedoring responsibilities without reference to developments in other work sectors to which their Lordships' attention was not drawn. Here we must pause to observe that even in *M'Lachlan*, a striking out case, Lord Young, who delivered the most detailed judgment noted (at [758]):

> Now, I am not aware of any authority for the proposition that a stevedore is not responsible for an accident to one of his men from a defect which he should have seen to and would have discovered had he made proper supervision. I think there is authority to the effect that a very slight supervision will be sufficient on the part of the stevedore to exempt him from responsibility, and that he may assume that this, that, and the other thing are all right in a ship without making a special examination. *But I cannot assent to the proposition that there would be no liability if things are wrong, which by proper supervision, without requiring anything out of the way on his part, he would have discovered so as to prevent his man going into that danger*. [emphasis added]

So it is evident that even then, in 1896, when the law on employment responsibilities was still in its infancy, there was an acknowledgment that stevedores had some obligations to discover defects. On the other hand, the House of Lords in *Cremin* appeared content to rather perfunctorily accept that it was not proved to the Scottish courts that it was the "practice or course of duty of stevedoring firms to make such inspection" (at [107]). Perhaps this might have been because the real focus of that court's attention was on the liability of the ship-owner of the vessel *qua* occupier. Pertinently, Lord Wright noted, contrary to what Lord Young stated in *M'Lachlan* (at [111]), that:

> I cannot, however, see what purpose would be served by a slight inspection of the structure by the master stevedore where there was no special grounds of suspicion, *while to require it would place an unwarranted and unbusinesslike burden on the stevedores*. [emphasis added]

We have already explained earlier why we find the general reasons given in support of such a proposition for stevedores unpersuasive. In the result, we are unable to accept that stevedore employers in Singapore have no obligations in circumstances similar to matters such as this to conduct a preliminary risk assessment of the area of work for their employees, and in particular the equipment or apparatus they might use. We do not think that such a duty would be an unwarranted or unbusinesslike burden on stevedores in Singapore. Having said that, however, we must stress that the duty to conduct a preliminary risk assessment is not absolute: see [30] above. Each case must be considered in the light of the prevailing circumstances and resolved according to the standard of reasonableness.

Approach of other jurisdictions

42 This is a progressive approach that is consistent with a number of modern authorities on an employer's responsibility for its workers' safety. We have already cited the case of *Christmas* earlier (at [30]) where the House of Lords held that employers are obligated to take reasonable measures to inspect work premises for safety hazards, even when those premises belong to a third party. In addition, the position that the golden rule embraces an expectation that the employer inspect the working environment is, today, firmly rooted in Australia, England and even Scotland across all other ranges of employment.

43 In Australia, a leading decision in this area of the law is *O'Connor v Port Waratah Stevedoring Co. Pty. Ltd. And The Broken Hill Proprietary Co Ltd* 13 SASR 119 ("*O'Connor*"). We should point out that this authority was apparently not drawn to the Judge's attention. That case involved a waterside worker who was injured in a fall when negotiating ladders which descended into the hold of a ship. The ladders were arranged in an unusual manner, with the lower ladder not aligned with the upper ladder. Usually in such cases, a handrail would be fitted to assist workers. However, in this particular case, no handrail had been fitted to the ladders. The court of first instance held that since the stevedoring company was not in control of the ship nor able to do anything effective to alter its structure, it could not be regarded as liable. This is not very different from the approach adopted by the Judge here. On appeal, the Supreme Court of South Australia disagreed with lower court's decision and allowed the appeal. Bray CJ made the following highly pertinent observations (at [135]–[137]):

> No doubt there was a time when the prevalent view was that an employer was under no obligation to his employees with regard to the safety of premises in the occupation of a stranger where the employees were working in the course of their employment, and in particular that stevedores were under no obligation to their employees to inspect for safety purposes the vessel where those employees had to work; see for example, [*M'Lachlan*]…But this doctrine in its absolute form has not survived the decision of the House of Lords in *Smith v Austin Lifts Ltd* … Of course, it does not follow that the employer is always bound to inspect for safety premises in the occupation of others where he requires his employees to work, though in some cases he clearly is; see for example *Cockatoo Docks & Engineering Co. Pty. Ltd. v Monteforte*. There are, as Pearce L.J., as he then was, said in *Wilson's case*, between extremes on either side "countless possible examples in which the court may have to decide the question of fact: did the master take reasonable care so to carry out his operation as not to subject those employed by him to unnecessary risk?"
>
> In the present case there is evidence from which the learned Judge could have inferred the existence of a practice on the part of stevedores to inspect the ladders for safety before the waterside workers descended into the hold, and, of course, it is strong evidence of negligence by omission that what was not done "was the thing which was commonly done by other persons in

like circumstances" (*Morton v. William Dixon Ltd*., per Lord Dunedin at p. 809, and see *Paris v. Stepney Borough Council*). It is, I think, even stronger if it was a thing which was commonly done by the very party himself.

…

In short, I think there was evidence there from which the learned Judge could have found the existence of a duty to inspect and a failure to perform that duty, or, alternatively, notice to the stevedore of the existence of the danger.

Undoubtedly, Bray CJ's views in *O'Connor* were shaped, in part, by the finding that there was a practice of making a preliminary inspection by the stevedoring industry there. This, however, does not detract from the force of his sensible observation that the proposition that employers have no obligations with regard to employees who work on the premises belonging to strangers no longer holds sway today.

4 4 *Crombie v McDermott Scotland Ltd* [1996] SLT 1238 ("*Crombie*") is a fairly recent decision of the Outer House of Scotland. In *Crombie*, an employee was injured at work while using a wooden walkway which broke as he walked across it. The defective walkway was the only means of access. He sued the occupiers of the site, the company who had subcontracted his services and his employers. In relation to the employers, Lord Hamilton held (at [1242]–[1243]):

In the case of a stevedoring employer it has been held that he does not owe any general duty to his employees to inspect the ship and its equipment to see that they are in safe condition (*Durie v Main*), though insofar as that may represent a rule of law it appears to proceed on the practical consideration that the inspection of a ship is a highly technical matter. It is also subject to the qualification that where the employer has knowledge of an actual or potential danger he has a duty to guard against it….

Notwithstanding the width of the statements in Glegg on *Reparation* (4th ed), at p 385, and in Walker on *Delict* (2nd ed), at p 575, *I doubt whether any such general rule as that applied to stevedores can in modern circumstances properly be said to be applicable across all ranges of employment. The test must be whether in all the circumstances the performance of his duty of reasonable care calls for steps to be taken by the employer to acquaint himself with the physical circumstances in which his employees are to work. Insofar as older authorities (such as Taylor v Sims & Sims and Cilia v H M James & Sons) tend to suggest that an employer has no duty to safeguard his workers against dangers arising from the state of the premises of third parties, they are not, in my view, consistent with the principles of the modern law*. [emphasis added]

45 In our view, there are certainly compelling practical reasons to follow the pragmatic approach adopted in *Christmas*, *O'Connor* and *Crombie* in concluding that there exists a general duty on employers to ordinarily inspect unfamiliar working conditions that their employees are expected to operate in. To say that employers need not inspect work premises for safety hazards simply because work is to take place on a third-party worksite could result in a grave (and unnecessary) derogation of the sanctity of the golden rule as well as its non-delegable feature. Hence, good reasons must be present before such a narrow view is adopted in any particular case. The authorities cited by Mr Eu do not provide such reasons. On our part, we see little reason to excuse employers who send their workers to operate on third-party premises from inspecting such premises while steadfastly maintaining that employers remain responsible for inspecting their own premises for signs of danger. *The real issue is not where the employees work but what reasonable steps their employers are*

required to take at all times to protect these employees, whether it be on the employer's own premises or third party premises. While, as previously mentioned (at [19]), the degree of control over which an employer may exercise over the workplace is a relevant factor in ascertaining the standard of care, such a fact does not *ipso facto* negate the existence of a duty to inspect. Indeed, in ordinary cases, as a commonsense proposition the necessity to inspect work premises should be even more compelling when the worksite does *not* belong to the employer; in such an instance both the employer and its employees would be entirely unfamiliar with the potential hazards present. Hence, we do not agree that the restrictive position apparently adopted in *Cremin* and *Durie* is one that is appropriate for Singapore.

46 It also bears noting that the Judge seemed to have examined the present case purely in terms of the duties expected of a master stevedore, an approach not unlike that adopted in *Cremin* and *Durie*. This approach, in our view, is mistaken. In the final analysis, the issue is a more general one. It is this: what measures would an employer reasonably have taken in the prevailing circumstances so as not to fall on the wrong side of the line notionally drawn by the golden rule? We are unable to see the logic of a narrow approach that seems to exempt the stevedoring industry from undertaking even a modicum of responsibility for worker safety when they are deployed in premises of third parties which may be unsafe. In our view, the duty to perform risk assessment exercises is one that is generally applicable to all employers and there are no special reasons to exceptionally exempt the stevedoring industry from this general obligation on the basis that they have no control over the ships concerned.

Legislative Framework

Workplace Safety and Health Act

47 We are mindful that this accident took place on 18 October 2005. As such, legislative and other developments that occurred after that date might not, technically speaking, be applicable in scoping the extent of the common law duty at the material time. Nevertheless, we think it is pertinent to examine the current legislative framework to ascertain whether employers are now also ordinarily expected to perform pre-work risk assessment exercises aside from the common law obligations we have considered above. We refer, first, to the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) (the "WSHA"), which came into force on 1 March 2006. The WSHA is a consolidating statute that attempts to set the tone for a safety first culture in the Singapore workplaces by stipulating the duties of various stakeholders, including employers. In introducing the Bill, the Minister for Manpower, Dr Ng Eng Hen ("Dr Ng"), explained in Parliament during the Second Reading of the Workplace Safety and Health Bill (see *Singapore Parliamentary Debates, Official Report* (17 January 2006) vol 80 at col 2204) that:

> Following the tragedies of 2004, I informed this House in March last year that Government would undertake a fundamental review of our legislation to improve **safety** outcomes. Three fundamental reforms in this Bill will improve safety at the workplace. First, this Bill will strengthen proactive measures. Instead of reacting to accidents after they have occurred, which is often too little too late, we should reduce risks to prevent accidents. **To achieve this, all employers will be required to conduct comprehensive risk assessments for all work processes and provide detailed plans to minimise or eliminate risks**.
>
> Second, industry must take ownership of occupational safety and health standards and outcomes to effect a cultural change of respect for life and livelihoods at the workplace. Government cannot improve safety by fiat alone. Industry must take responsibility for raising OSH standards at a practical and reasonable pace.

Third, this Bill will better define persons who are accountable, their responsibilities and institute penalties which reflect the true economic and social cost of risks and accidents. Penalties should be sufficient to deter risk-taking behaviour and ensure that companies are proactive in preventing incidents. Appropriately, companies and persons that show poor **safety** management should be penalised even if no accident has occurred.

[emphasis added]

48 The WSHA literally only applies to workplaces listed in the First Schedule of the Act. These we note extend to "any dock, wharf or quay where loading, unloading or bunkering of a ship is carried out by persons other than by the crew of the ship"[note: 2], but do not apparently include stevedoring operations carried on board ships. It is, nevertheless, of value in ascertaining contemporary general standards of safety at the workplace. We pause to observe that it would be odd to suggest that in the eyes of the common law a stevedore has certain responsibilities on shore which can be thrown to the winds when the work is carried out on board a ship that is docked in port premises. Section 12 of the WSHA, which is the pivotal duty-creating provision, reads:

Duties of employers

12. —(1) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of his employees at work.

…

(3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —

(*a*) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;

(*b*) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;

(*c*) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —

(i) in their workplace; or

(ii) near their workplace and under the control of the employer;

(*d*) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work; and

(*e*) ensuring that those persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.

In the event of a contravention by an employer, the employer shall be guilty of an offence (s 20 of the WSHA).

49 These responsibilities to be discharged by employers continue to apply *even when third-party*

premises are involved. This was made clear by Dr Ng when he explained (at col 2204) as follows:

> Next, the Bill will expand responsibility and better define persons who are accountable for safety outcomes. Under the present regime, legal liability in respect of all persons in the factory falls on the shoulders of the registered occupier. For a traditional assembly-line plant, this is comprehensive as the factory occupier is typically the employer of all the workers and has control over the risks to which they are exposed.
>
> **However, today, with outsourcing, specialisation of work and more diverse employment relationships, workplaces will often have workers employed by third parties and other specialists**. For example, in the construction sites, employees from various specialist sub-contractors work together on the same project, but under the direction of their respective employers. **In such a scenario, placing legal liability on the registered occupier alone may be unfair and ineffective**. This is because the employees of the sub-contractors may choose to ignore the safety instructions of the occupier or carry out unsafe work practices, or introduce unsafe work practices without the knowledge of the occupier.
>
> [emphasis added]

Accordingly, s 5(1) of the WSHA states that:

> **5.** —(1) In this Act, "workplace" means any premises where a person is at work or is to work, *for the time being works*, or customarily works, and includes a factory. [emphasis added]

In our opinion, and consistent with Dr Ng's remarks in Parliament, the measures to be undertaken by an employer, "necessary to ensure the safety and health of his employees at work", must surely ordinarily include the performance of a pre-work risk assessment exercise. Without such an exercise, the other requirements under s 12(3) of the WSHA are unlikely to be satisfied.

Factories Act

50 Interestingly, the predecessor of the WHSA, the Factories Act (Cap 104, 1998 Rev Ed) (the "FA"), was even more direct in this regard. As Dr Ng pointed out (see [49], above), the responsibility for the safety of employees under the FA was imposed on occupiers rather than employers. However, it would be pertinent to examine the standards laid down under the FA as a gauge of the standards the common law should expect of employers since they relate to the same issue: workers' safety. Section 47A of the FA, repealed on 1 March 2006, stipulated as follows:

> 47A. —(1) ***No work specified in the Twelfth Schedule shall commence in any factory unless*** —
>
> (*a*) ***the hazards to which persons at the workplace could be exposed as a result of such work have been identified***;
>
> (*b*) the injury or harm that could arise from the hazards referred to in paragraph (*a*) have been identified;
>
> (*c*) safe work procedures are implemented; and
>
> (*d*) steps are taken to ensure that all persons involved in such work are familiar with the safe work procedures.

[emphasis added in bold italics]

The work listed under the Twelfth Schedule of the FA included "[w]ork at a place where a person is liable to fall a distance of more than 3 metres …" (See para [2] of the Twelfth Schedule). In addition, ss 33(7)–(9) of the FA required employers to provide additional safety equipment when their workers have to work at a height of more than three metres. Those sections stated:

> **33.** —…
>
> (7) Where any person has to work at a place from which he would be liable to fall a distance of more than 3 metres or into any substance which is likely to cause drowning or asphyxiation, a secure foothold and handhold shall be provided so far as practicable at the place for ensuring his safety.
>
> (8) Where it is not practicable to provide a secure foothold and handhold as required under subsection (7), other suitable means such as a safety belt and fencing shall be provided for ensuring the safety of every person working at such places.
>
> (9) Where a safety belt is provided pursuant to subsection (8), there shall be sufficient and secured anchorage, by means of life line or otherwise for the safety belt, and the anchorage shall not be lower than the level of the working position of the person wearing the safety belt.

As previously mentioned, the WSHA took over the role of the FA after the latter was repealed. The responsibilities of the employer to provide safety belts is no longer specifically mandated but s 12(3)(*a*) of the WSHA, to all intents and purposes, has the same effect: see [48], above. We acknowledge the fact that the FA, like the WHSA now, did not expressly apply to stevedoring operations carried out onboard a ship. Even so, the fact that factories owners, under the FA (an Act in force at the date of the accident) were required to perform an identification of safety hazards before work began and provide additional safety equipment insofar as such work required its workers to work from a height of more than 3 metres, provides a strong indication of the kind of standard the common law should expect of the respondent even when operating from third party premises.

Ministry of Manpower Workplace Safety and Health Advisory Committee's Compliance Assistance Checklist (Working at Height)

51 The requirement to conduct a preliminary risk assessment is now explicitly contained in a checklist provided by the Ministry of Manpower's Workplace Safety and Health Advisory Committee (the "WSHAC Checklist"). This checklist entitled "Compliance Assistance Checklist (Working at Height)", issued in March 2007, has been specifically designed to provide employers with a guiding framework of what is expected of them when their employees have to work from heights. While it appears that the checklist is primarily targeted at the construction industry, it is, nevertheless, a relevant gauge (with the necessary modifications) of the precautions that might be taken when work from heights is involved. The pertinent part of this checklist includes the following suggestions:

> 34 *Risk assessment has been conducted and documented for work at height*.
>
> 35 All reasonably practicable steps been taken to eliminate any foreseeable risk.
>
> 36 Record of the risk assessment is maintained. Records shall be kept for a period of not less than 3 years.

37 Persons exposed to risks are informed of the nature and safe work procedures are implemented to eliminate and control these risks.

[emphasis added]

Observations on the relevance of Industry Codes

52 Perhaps, it would also be apt at this juncture to make some brief observations on the relevance of industry codes of conduct promulgated by regulatory authorities in ascertaining common law obligations. Strictly speaking, these codes (such as the WSHAC Checklist) are not legally binding and should not be unthinkingly deemed to have been automatically incorporated in, or even said to be invariably reflective of the existing common law standards of care. However, as mentioned above, in the ascertainment of the appropriate standard of care to be adopted in each individual case, all relevant factors must be considered. The existence of a regulatory code of practice is one such factor that may be considered. This is settled law. *Charlesworth & Percy* states (at para 6-45):

> **Guidance from statutory codes and literature**. A recognised standard of conduct may be contained in certain statutory codes and official literature such as the Highway code, Regulations for Preventing Collisions at Sea, Stationery Office and Factory Department pamphlets, posters and notices, dealing with essential matters such as safety, handling loads, dust suppression and hygiene, particularly in regard to the avoidance of dermatitis, to which may be added the recommendations of the British Standards Institute. **All of these may be used as a practical guide to the standard of care to be aimed for, as well as the nature and extent of any particular danger which is likely to be encountered**. Their use is admissible to establish the existence of known dangers and what practicable safety measures can be taken against them. The wide circulation of such information may be highly relevant when it comes to deciding what reasonably a prudent employer ought to know. **Even so, neither do they have statutory force nor do they supersede the common law duty. A code may appear to be exhaustive but there is always space left for discerning the common law duty of care**. [emphasis added]

53 Acknowledging that this WSHAC Checklist had not been issued when this accident took place, we nevertheless consider it of some relevance to these proceedings as it was issued in March 2007 not long after the accident. Even after accepting the inapplicability of the detailed measures spelt out there for the purposes of liability in these proceedings, we are of the view that the WSHAC Checklist nevertheless also reflects and reinforces at a general level the common law requirement that appropriate safety measures must be in place before any work from heights is undertaken, see above at [30]–[32]. Needless to say, such standards are not *conclusive* as to the common law standard of care that has to be met in every situation.

54 We, therefore, conclude that the fact that the work premises may not belong to the employers should not, generally, detract from its common law obligation to take reasonable care for the safety of its employees *inter alia* by conducting an appropriate preliminary risk assessment prior to the commencement of work. *The nature and extent of such a risk assessment exercise will of course depend on the facts*. Further, if working from heights is required, appropriate safety precautions must be taken. The statutory framework on employer responsibilities at the time of the accident (and currently) do not erode these common law obligations. On the contrary, the existence of these obligations at common law is entirely consistent with that framework.

Application of law to the facts

FAILURE TO MAKE ANY ATTEMPT AT INSPECTION

55 In order to satisfy the golden rule, the respondent ought to have inspected Hatches 2 and 5 and parts of the deck in which its employees were to work to determine if there were any hazards which could have jeopardised the safety of its workers. Since working at heights was involved, particular attention should have been paid to the areas where the appellant would have to work at heights and the equipment to be used or needed. This would have necessitated examining the chain of ladders which led into Hatch 5 and, in particular, the defective ladder. We asked Mr Eu, if he could point to any evidence indicating that the respondent had attempted to make such an examination. He could not. According to Mr Rajendran's affidavit of evidence-in-chief[note: 3], all Mr Rajendran did, prior to the execution of the work, was to deploy the workers to either Hatch 2 or 5. There was no mention of any attempt at inspection and or the taking of any safety measures. In fact, it was the Respondent's stance that the duty to ensure that the hatches were safe for the employer's workers to work rested solely with the ship-owners. The respondent emphasised that it did not own the vessel. This, for the reasons given above, is a dubious contention. The respondent was not hindered from performing such an inspection. On the facts that have been adduced, the respondent never once communicated with the ship-owners about the working conditions or more specifically the risks that might be involved in carrying out cargo operations in the vessel, to say nothing of obtaining permission to inspect Hatch 2 and 5, generally, and the chain of ladders, specifically.

56 The respondent also maintained that the failure to inspect did not cause the appellant's injuries as there was no evidence to suggest that an inspection of the Hatch 5 or the chain of ladders would have revealed the problem with the defective ladder. It pointed out that the employer's workers, including the appellant, had used the defective ladder in the morning uneventfully. Having breached its duty to conduct a pre-work commencement inspection, the burden to prove that any inspection would have been unhelpful rested squarely on the respondent. Simply by contending that others had used the defective ladder earlier would not be sufficient to discharge this burden as this was quite obviously an accident waiting to happen. This burden might have been satisfied by adducing specific evidence on what was the pre-existing damage present in the defective ladder and, in particular, whether it was an observable damage. No such evidence has been given. Such evidence would have ordinarily been included in the loss adjustors' report that was in fact procured after the accident. Unfortunately, the respondent, despite having such a report, chose to only adduce the photographs contained therein as evidence but withheld the report itself. This is an appropriate case where an adverse inference ought to be drawn against the respondent for not producing material evidence that only it was in a position to obtain and adduce and which could have shown the ladder was unsafe or was likely to break or detach itself from the hull at any time. If indeed the report supported the respondent's position that the actual cause of the welding failure was not discoverable, why did it not make available the report to confirm this fact?

FAILURE TO TAKE MEASURES TO MINIMISE RISK OF FALLING FROM HEIGHTS

57 Two of the key factors relevant in gauging the appropriate standard of care are the *risk quotient*, which is the likelihood of harm occurring, as well as the *damage quotient*, which is the magnitude of that harm if it occurs. Indeed, while the "existence of some risk is an ordinary incident of life" (see Lord Porter in *Bolton v Stone* [1951] AC 850 at 858), it is also trite that some situations present more danger than others. In such situations, the standard of care imposed by the law should be raised accordingly to reflect the corresponding increase in risk. Working at heights would certainly be one such situation which involves an enhanced risk of harm to workers. The risk of fatalities and serious accidents occurring if no safety precautions are taken in such a work situation is glaringly obvious. Unsurprisingly, the common law then demands more of employers who require their employees to work at heights as compared to employers who do not expose their workers to similar dangers.

58 How is this particular standard of care to be assessed regardless of whether the worker is employed to work in a construction site, a factory, a building, a ship or any other site? In our view, an employer who requires its workers to work at heights must take all reasonable measures to minimise the risk of falling and the consequential injuries that might result from such accidents. The measures to be taken must be reasonable in the sense that the degree to which such measures may minimise the risk of falls must be balanced against the practicability of implementing the measures. The measures found reasonable in one case may not be so in another. An indication as to what precautions ought to be taken can be found in the WSHAC Checklist. Amongst others, the WSHAC Checklist suggests the following:

Measures to be taken to prevent falls

3 Hand/Foothold

Secure handhold and foothold is provided for any person who has to work at a place from which he would be liable to fall:

(a) a distance of more than 2m; or

(b) into any substance which is likely to cause drowning or asphyxiation.

4 If item 3 is not practicable, other suitable means such as a safety harness or safety belt shall be provided.

5 Anchorage

If a safety harness or safety belt is provided, then

a. there shall be sufficient and secured anchorage

b. the anchorage shall not be lower than the level of the working position of the person wearing the harness or belt.

…

Safety belt/safety harness & lifelines

8 Safety belts/safety harness, life lines and all devices for the attachment of life lines shall be of adequate strength and of a type tested and approved by a testing body (PSB).

9 Every safety belt/safety harness made available or supplied to any person for his personal protection shall be used by the person in the performance of his work.

10 Anchorage

When the use of a safety belt/safety harness is necessary for a person's safety, adequate and suitable means of anchorage for the safety belt/safety harness shall, if practicable, be provided.

11 Where it is not practicable to comply with item 10, a life line securely attached to sufficient anchorage shall be provided.

12 At all times during use, the safety belt/safety harness shall be attached to an anchorage or to a life line securely attached to one or more points of an anchorage.

13 The life line shall be longer than is required to permit a worker to perform his work and the point or points of anchorage of the life line shall in no case be lower than the level of his working position.

14 Instruction

Every employee who is provided with a safety belt/safety harness shall be instructed in the proper method of wearing and using it, as well as attaching it to the life line.

15 Life line

Padding, wrapping or similar means shall be provided to protect every life line from contact with edges or objects which may cut or severely abrade it.

[emphasis added]

59 The above requirements laid down in the WSHAC Checklist may be summarised as follows. Where there is a likelihood that an employee may fall from a height, there should preferably be secure handholds or footholds to minimise the risk of such a fall. Significantly, in order to ensure that the handholds or footholds are secure, an inspection of the same would be required. This buttresses our earlier point regarding inspection of third-party premises. Where providing handholds or footholds is not practicable, "other suitable means such as a safety harness or safety belt shall be provided". Where safety harnesses or belts are used, the employer should also ensure that there are adequate and suitable means of anchorage for the safety belts or harnesses. In situations where a secure anchorage cannot be found within the vicinity of area where the safety belts/safety harnesses are to be used, an employer should provide a lifeline to the employees. This lifeline is to be secured to a place of anchorage at one end (located at a point no lower than the height at which the employee will operate) and to the safety belts or safety harnesses. In this way, safety belts or harnesses may be effectively used without the need of a nearby point of anchorage.

60 In passing, we also note that the use of safety belts and/or harnesses is now also mandated in the Port of Singapore Authority Corporation Limited Safety Rules ("PSA Safety Rules") which were made in January 2007[note: 4]. The PSA Safety Rules is a set of rules which employers and employees alike have to agree to comply with before a PSA Pass authorising the employees to work within the premises of the port will be issued. The part of the PSA Safety Rules of interest to the present case read as follows:

A SAFETY RULES FOR COMPANY

1 Proper Protective Apparel

S153 To ensure that safety belts/harnesses are provided to workers working from heights or riding on quay crane speaders.

61 There is considerable force in the view that when a regulatory body such as the Port of Singapore Authority, with the benefit of specialised knowledge in a particular industry, makes rules, the common law should not be slow and lag behind. We find the following observations from *Munkman*

(at para 2.113) most apt:

> Overall it is to be hoped that where the courts are considering the safety and welfare of employees, even where the statutory and regulatory provisions do not apply, they will look to these as of **principal assistance** as they will also in respect of both governmental guidance and other authoritative publications pertinent to the particular trade or operation in issue. [emphasis added]

Departing from such obligations should only be considered when the standards set therein go far beyond what is reasonable. An example of such a situation may be found in the very recent Australian case of *Leighton Contractors Pty Ltd v Fox* [2009] HCA 35. Briefly, the respondent in the latter case was injured while attempting to clean a delivery pipe at a construction site. The High Court of Australia overruled the Court of Appeal's decision to allow the respondent's claim against the appellant. One of the reasons for the High Court's decision was the finding that the Court of Appeal was influenced by a statutory requirement which imposed strict liability on the appellant to provide induction training, a liability the appellant did not satisfy. The High Court felt that such a liability went beyond the standard of reasonableness required at common law and that the appellant had acted reasonably even if it did not comply with the statutory standard.

62 We stress, however, that for the purposes of these proceedings, we are not relying on the WSHA, WSHAC Checklist or PSA Safety Rules to hold the respondent accountable to the appellant. They have been referred to primarily for the purposes of giving a comprehensive overview of the measures that have been put in place in Singapore recently to define responsibilities in the workplace and to persuade employers to take a more pro-active approach towards employee safety.

Summary

63 We summarise. The common law imposes a duty on all employers to take reasonable care for the safety of their workers. This duty is non-delegable and personal and employers cannot abdicate from this solemn responsibility. This duty persists even if employees are delegated or deployed to work in premises not belonging to the employers. In satisfaction of this duty, if the work is of a nature that might give rise to safety concerns, employers are generally expected to perform a risk assessment exercise including, where possible, a physical inspection of the workplace prior to the commencement of work. An employer's enduring duty is not to expose his employees to unnecessary or avoidable risks at a workplace. He is expected to take reasonable care in assessing the risks that might be present and to use reasonable means to make the work safer. If it is foreseeable that its workers will have to work from heights, the employer will, in addition, be obligated to take all reasonable measures to minimise the risk of its workers falling and injuring themselves. At the end of the day, however, the standard of care required of employers does not extend beyond that which is reasonable in the circumstances of the case. The law will strike a balance between the extremes of requiring constant paternalism and licensing careless irresponsibility. As such, employers who genuinely value the well-being of their employees and welfare of their employees by developing a culture of workplace safety need not fear falling afoul of the law.

64 In the present case, it was clear from the outset that the respondent's workers, including the appellant, would have to negotiate the chain of ladders described in [5] in order to enter the hatches to which they were assigned to work. In addition, since no other means was provided, it was also known that the appellant and his colleagues would use the ladders to manoeuvre around the cargo containers as part of their work. In so doing, the respondent's workers would be working from, and did work at, heights. The respondent ought to have performed a risk assessment of the work premises before work commenced, provided its employees with additional safety equipment to minimise the risk

of falling and ensured that they utilised such safety equipment. It is clear to us, on the facts of the case, that the respondent did little to address its mind to the safety of its employees. As a result, the fault in the defective ladder was not spotted and, significantly, the duty to provide safety belts and harnesses neglected. The respondent must now accept the consequences of its entirely nonchalant approach towards worker safety that has resulted in this unhappy and plainly avoidable accident. In this regard, certain observations made by Dr Ng, in the course of introducing the WSHA Bill are strikingly apt in relation to the present facts (see *Singapore Parliamentary Debates, Official Report* (17 January 2006) vol 80 at col 2204):

> The reality is that on a day-to-day basis, safety may be the last thing on the minds of management and workers on the ground. There are deadlines to meet, monotony, apathy or lethargy to overcome, a lack of professionalism and training, unclear lines or no lines of accountability, and poor management. Any one of these factors can lead to an accident. A combination of them is often catastrophic.

65 This accident illustrates in a very vivid manner the importance of observing safety requirements in all cases where employees work at heights. Basic safety precautions, the employment of appropriate safety equipment and above all the establishment of a safety first work culture will go a long way towards lowering the risk quotient for the occurrence of such avoidable work related accidents. We do hope that our views on the uncompromising legal requirements imposed on all employers to have conscientious and consistent regard to worker safety will be noted by all stakeholders. While the primary responsibility for worker safety remains with employers, others like insurers, who often bear ultimate liability for claims such as these, can also play a vital role in instilling a culture of safety in the workplace. For example, insurers can through the terms of their insurance coverage help incentivise and persuade employers to practise higher levels of safety consciousness.

Conclusion

66 In the result, we find the respondent fully liable for the injuries that the appellant suffered with damages to be assessed. Costs are also awarded to the appellant here and below with the usual consequential orders to follow.

[note: 1]Law Reform (Personal Injuries)Act 1948

[note: 2]Subsection 4 of the First Schedule.

[note: 3]Appellants' Core Bundle (Vol II) at p 33-34.

[note: 4]Appellant's Bundle of Authorities (Part II) at p 283.