IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 306

Magistrate's Appeal No 9234 of 2022/01

Between

Ng Kok Wai

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law — Offences — Property — Theft]
[Criminal Law — Offences — Property — House-breaking]
[International Law — Criminal acts — High seas]
[Statutory Interpretation — Construction of statute — Purposive approach]

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Ng Kok Wai
v
Public Prosecutor

[2023] SGHC 306

General Division of the High Court — Magistrate's Appeal No 9234 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
24 August 2023

27 October 2023 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 A Singaporean is accused of engaging in conduct that would amount to an offence under the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). However, this transpired on board a foreign-flagged ship that was sailing in international waters. The accused person admits to having committed the acts constituting the offence. His defence is that the provisions of the Penal Code do not apply beyond the territory of Singapore so as to render him criminally liable for his actions committed out in the high seas. Accordingly, the accused person maintains that he has not committed an offence under the Penal Code and that Singapore courts have no jurisdiction over him. Is that the correct position in law? The District Judge ("the DJ") who heard the matter did not think so having regard to certain statutory provisions. The DJ accordingly convicted Mr Ng Kok Wai ("the Appellant").

2 There is no prior reported or reasoned decision addressing this issue. The present appeal HC/MA 9234/2021/01 ("the Appeal") thus provides us an opportunity to consider the circumstances in which the provisions in the Penal Code may be applied extraterritorially. Both the Prosecution and the DJ who dealt with the matter at first instance considered ss 178 and/or 180 of the Merchant Shipping Act (Cap 179, 1996 Rev Ed) ("MSA") would permit the extraterritorial application of the Penal Code offences. Prior to the hearing of the Appeal, we directed the parties also to consider s 3 of the Penal Code and address us on what bearing that provision might have on this issue. We also appointed Mr Sampson Lim ("Mr Lim") as young independent counsel to assist us on the relevance of the various provisions that had been raised in determining whether, and if so, in what circumstances the Penal Code might have extraterritorial application.

3 Having considered the parties' submissions, we dismiss the Appeal. We begin by setting out the relevant background leading up to this Appeal. We then consider the relevant statutory provision that has the effect of extending the territorial scope of the relevant provisions of the Penal Code in certain circumstances.

Background

The facts

4 The Appellant is a Singapore citizen, while the victim is a female Singapore Permanent Resident ("the Victim"). In December 2021, both the Appellant and the Victim were passengers on board a Bahamas-registered cruise ship ("the Ship") that was sailing on a three-day "cruise to nowhere" ("the Cruise") from 12 to 15 December 2021. The Appellant and the Victim did not know each other, but happened to occupy adjacent cabins on the Ship.

5 On the second day of the Cruise, the Appellant twice attempted to enter the Victim's cabin using his key card but was unsuccessful. Shortly after the second failed attempt, the Appellant entered his own cabin and climbed over the balcony railing to gain access to the balcony of the Victim's cabin. He then entered the Victim's cabin after ensuring that no one was present. Once inside, the Appellant opened the Victim's luggage, took her brassiere and with it, exited the cabin through the front door. The Appellant later returned to the Victim's cabin in the same way as he had done earlier and proceeded to remove two pieces of luggage belonging to the Victim and her friends, which he then left outside the Victim's cabin. Later in the evening, the Victim and her friends found their luggage outside their cabin, and upon checking, discovered that the Victim's brassiere was missing. A police report was lodged, and the Appellant was arrested after the Ship returned to Singapore.

The proceedings and decision below

6 The Appellant was originally charged with the following:

(a) one count of house-breaking under s 451 of the Penal Code read with s 180 of the MSA; and

(b) one count of theft under s 380 of the Penal Code read with s 180 of the MSA.

7 The Appellant does not dispute that he broke into the Victim's cabin on the Ship and removed her brassiere from the cabin without her consent. It is therefore not in dispute that the factual elements of the theft and house-breaking offences are made out. It was, however, common ground between the parties that the relevant provisions of the Penal Code under which the Appellant was charged did not have any extraterritorial application. The Appellant claimed trial solely on the basis that he could not be held criminally liable in Singapore

for his actions which took place outside of Singapore, on a Bahamas-flagged ship on the high seas. In essence, his contention was that the relevant Singapore criminal law that proscribed his conduct did not apply to someone such as himself whilst on a foreign-registered ship on the high seas. This was the only issue that the DJ was required to determine.

8 On 30 September 2022, the DJ rendered his decision holding that ss 380 and 451 of the Penal Code had extraterritorial effect in the circumstances of this case by virtue of s 178 of the MSA; and further, that s 180 of the MSA conferred on the Singapore courts the jurisdiction to hear and determine the charges that the Appellant faced, subject to certain amendments being made (see [9] below): see *Public Prosecutor v Ng Kok Wai* [2022] SGDC 231 (the "Judgment") at [72].

9 Following the release of the Judgment, the Prosecution amended the original charges to reflect ss 178 and 180 of the MSA as the relevant provisions that extended the territorial reach of ss 380 and 451 of the Penal Code. The Appellant thus faced the following charges (the "Charges"):

(a) one count of house-breaking under s 451 of the Penal Code read with ss 178 and 180 of the MSA; and

(b) one count of theft under s 380 of the Penal Code read with ss 178 and 180 of the MSA.

10 The Appellant admitted to the Agreed Statement of Facts setting out the relevant facts leading to the commission of the offences, and was subsequently convicted of the Charges by the DJ. The Appellant was then sentenced to an aggregate sentence of four months' imprisonment. Dissatisfied with the DJ's decision, the Appellant appealed against his conviction.

The law

11 Before we summarise the parties' cases, we think it helpful to begin by setting out the applicable legal principles on two broad areas of law that form the backdrop to the issues in this Appeal.

12 The first concerns statutory interpretation because the resolution of the principal issues in this case turns on the interpretation of certain statutory provisions. As the parties do not dispute the applicable framework, it is sufficient to set out in brief terms the well-established approach laid down by the Court of Appeal in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*").

13 The second, and one that is more pertinent in this Appeal, relates to the characterisation of certain statutory provisions as having the effect either: (a) of conferring jurisdiction on the Singapore courts to try offences; or (b) of extending the territorial application of our domestic criminal laws to places beyond the territory of Singapore. The former is concerned with the authority of a Singapore court to try a matter, which in this context would have taken place outside the boundaries of Singapore. The latter is concerned with whether a provision of our criminal law, which would typically proscribe conduct that takes place here, has had its reach extended so that it also proscribes conduct that takes place beyond the territory of Singapore. These are two distinct ideas from both a conceptual and practical point of view. It is therefore important to distinguish a court's criminal jurisdiction (meaning its authority to try a case) from the application of domestic statutes to criminalise acts committed outside the territory of Singapore. We expand on this distinction at [19]–[30] below.

The law on statutory interpretation

14 Dealing with the law on statutory interpretation, it is well-established that in interpreting a statutory provision, the Singapore courts adopt a purposive approach, which is mandated by s 9A of the Interpretation Act 1965 (2020 Rev Ed): see *Tan Cheng Bock* at [36]. Undertaking a purposive interpretation of a legislative text involves the following three steps, summarised as follows (see *Tan Cheng Bock* at [37]–[53]):

(a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole. In so doing, the court may rely on various rules and canons of statutory construction.

(b) Second, ascertain the legislative purpose or object of the specific provision and the part of the legislation in which the provision is situated. The purpose should ordinarily be gleaned from the text itself before the court evaluates whether extraneous material is necessary. In deciding whether to consider the extraneous material, and if so what weight to be placed on it, the court should have regard to, among other things, whether the material is clear and unequivocal and whether it discloses the mischief aimed at or the legislative intention underlying the statutory provision. Extraneous material may only be used to ascertain the meaning of the provision where the provision is ambiguous or obscure on its face, or where the ordinary meaning of the provision leads to a result that is manifestly absurd or unreasonable.

(c) Third, compare the possible interpretations of the text against the purposes or objects of the statute and prefer the interpretation that advances those purposes or objects over one that does not.

Principles governing the prosecution of Singaporeans for offences committed in international waters

15 We turn next to consider the applicable principles concerning the central issue in this Appeal – in what circumstances would a Singaporean be held liable for an act committed outside the territory of Singapore which, if committed within Singapore, would constitute an offence here and which the Singapore courts would have jurisdiction to try.

16 The DJ correctly identified the requirements that must be met before an accused person may be tried and convicted in Singapore for acts committed outside Singapore: see Judgment at [8]–[12]. Put simply, this turns on:

(a) whether there is an applicable statutory provision that renders an act committed by the accused person outside Singapore an offence under a Singapore law; and

(b) whether there is an applicable statutory provision that confers authority on the Singapore courts to try the accused person for the offence in question.

17 The DJ termed the first category of statutory provisions as "ambit extension provisions" and the second as "venue provisions". These labels have been used by distinguished commentators such as Professor Glanville Williams QC ("Professor Williams") in differentiating these two concepts: see Glanville Williams QC, "Venue and the Ambit of Criminal Law" (1965) 81 LQR 276 ("*Venue and the Ambit*") at 408. For the purposes of this judgment, we prefer to use the term "extraterritorial application provisions" instead of "ambit extension provisions", and "jurisdictional provisions" instead of "venue provisions". We think this more appropriately distinguishes the function of each category of these provisions.

18 Commentators have observed also that there is a tendency to elide the distinction between the two distinct types of provisions and to treat them as a unified inquiry into the court's criminal jurisdiction: see Michael Hirst, *Jurisdiction and the Ambit of the Criminal Law* (Oxford University Press, 2003) at pp 9–11. There is also a tendency at times to assume that if a statute happens to have extraterritorial effect, then the domestic court may be presumed to have the authority to try the matter.

19 Neither of these are well-founded. We therefore think it important to elucidate the distinction between jurisdictional provisions and extraterritorial application provisions.

Jurisdictional provisions

20 We begin with the court's jurisdiction. As the DJ correctly noted (see Judgment at [11]), the term "jurisdiction" refers to the court's authority to hear and determine a matter usually based on a statutory provision: see *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [11]–[14].

21 In the case of a criminal matter, the relevant statutory provisions that confer upon the Singapore courts their criminal jurisdiction, meaning their authority to hear and determine a criminal matter, are generally set out in s 15 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") (in respect of the jurisdiction of the General Division of the High Court), s 50 of the State Courts Act 1970 (2020 Rev Ed) (the "SCA") (in respect of the District Court's criminal jurisdiction) and s 51 of the SCA (in respect of the Magistrates' Court's criminal jurisdiction).

22 Section 50 of the SCA, which is relevant in this case, reads:

> **Jurisdiction of District Courts exercising criminal jurisdiction**
>
> **50.**—(1) Subject to subsection (2), a District Court exercising criminal jurisdiction has —
>
> (*a*) the jurisdiction and powers conferred on it by the Criminal Procedure Code 2010 and any other written law; and
>
> (*b*) without limiting paragraph (a), the power to order medical examination of a person who is an accused in any criminal proceedings where the physical or mental condition of the person is relevant to any matter in question in the proceedings.
>
> (2) The criminal jurisdiction of a District Court is exercisable where the offence is committed —
>
> (*a*) within Singapore;
>
> (*b*) on board any ship or aircraft registered in Singapore;
>
> (*c*) by any person who is a citizen of Singapore on the high seas or on any aircraft; and
>
> (*d*) in any place or by any person if it is provided in any written law that the offence is triable in Singapore.

23 Section 50(2) of the SCA thus empowers the District Court to try any criminal matter as long as the relevant acts or omissions occurred within the ambit of its provisions. Of particular relevance to the present Appeal is s 50(2)(*c*) of the SCA, which permits the District Court to try offences committed by a Singapore citizen on the high seas. It is therefore clear that the District Court has the jurisdiction (meaning the power and authority) to try the Appellant for the alleged offences he committed while on board the Ship because the Appellant is a Singapore citizen and the relevant acts occurred on the high seas.

24 This, however, is not sufficient in and of itself, to provide the basis for the Appellant to be convicted by the District Court. The fact that the court has the power and authority to determine the matter does not address the separate and distinct question of whether the relevant criminal statute that is relied on by the Prosecution has the effect of proscribing conduct that takes place outside Singapore. It is therefore necessary to establish that the facts alleged and proved against the Appellant, namely his act of breaking into the Victim's cabin on the Ship and taking her brassiere without her consent (see [5] above), amounts to an offence under the relevant Penal Code provisions, which in this case are ss 380 and 451 of the Penal Code. This raises the question of whether, and if so, how those provisions of the Penal Code may be applied extraterritorially.

Extraterritorial application provision

25 We begin with the well-established principle that "a statute generally operates within the territorial limits of the Parliament that enacted it": see *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 ("*Taw Cheng Kong*") at [66]. Correspondingly, the Court of Appeal in *Yong Vui Kong v Public Prosecutor* [2012] 2 SLR 872 at [41] observed as follows:

> … a domestic statute has no extra-territorial effect unless it is expressed to have such effect, and that in the absence of such express provision, acts committed outside the jurisdiction are presumed not to constitute an offence under the relevant domestic statute even if they would have amounted to an offence under that statute had they been committed within the jurisdiction …

26 Put another way, acts or omissions committed outside the territory of Singapore would generally not constitute an offence because such acts are usually not within the reach of the applicable domestic criminal legislation. However, the position would be different if some other statutory provision exists that extends the application of the domestic criminal legislation

extraterritorially or if the statutory offence itself reflects Parliament's intention that it is to apply extraterritorially.

27 In the Penal Code, this presumption (which we term the "presumption of territoriality") is encapsulated in s 2, which provides that "[e]very person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he is guilty *within Singapore*" [emphasis added].

28 The rationale for the presumption of territoriality was stated as follows in the Canadian Supreme Court case of *Libman v R* (1985) 21 CCC (3d) 206, which was cited with approval by the Court of Appeal in *Taw Cheng Kong* at [69]:

> [T]he territorial principle in criminal law was developed by the courts to respond to two practical considerations, first, that a country has generally little direct concern for the actions of malefactors abroad, *and secondly, that other States may legitimately take umbrage if a country attempts to regulate matters taking place wholly or substantially within their territories. For these reasons the courts adopted a presumption against the application of laws beyond the realm* … [emphasis added]

Simply put, it may be regarded as an unjustifiable interference with the sovereignty of other nations if a State were to extend the reach of its criminal legislation over the conduct of persons in a foreign State's territory.

29 This principle was applied in *Public Prosecutor v Pong Tek Yin* [1990] 1 SLR(R) 543 ("*Pong Tek Yin*"), where the accused person married his second wife in Malaysia while remaining married to his first wife under our law. The accused was subsequently charged with having committed the offence of bigamy under s 494 of the Penal Code (Cap 224, 1985 Rev Ed) (the "Penal Code 1985") and was convicted and sentenced before the District Court. His

conviction was subsequently quashed in the High Court which held that s 494 of the Penal Code 1985 did not have extraterritorial application: *Pong Tek Yin* at [17].

30 The presumption of territoriality is, as the term suggests, only a presumption. As mentioned above, Parliament may choose to legislate extraterritorially and create a statutory offence which criminalises acts or omissions occurring outside the territory of Singapore which has consequences within its borders which the State reprehends: see *Taw Cheng Kong* at [85]. The DJ in his written decision comprehensively surveyed various examples of such statutory offences with extraterritorial application, and so we do not restate them here: see Judgment at Annex B. Parliament may also enact a statutory provision that permits the extraterritorial application of existing domestic criminal laws to criminalise acts or omissions committed abroad in particular circumstances. Whether Parliament did any of this and intended a statutory provision to have extraterritorial application is ultimately a question of statutory interpretation.

The parties' cases on appeal

31 In light of the foregoing discussion, it becomes clear that the real issue in this Appeal is not whether the District Court had the jurisdiction to try the Appellant. Rather, the question is whether the acts committed by the Appellant amounted to a criminal offence under the relevant provisions of the Penal Code given that they took place outside Singapore. Sections 380 and 451 of the Penal Code (which the Appellant is being charged with) do not on their own have extraterritorial application. Thus, the issue is whether there is some other statutory provision that extends the remit of these provisions such that they have extraterritorial application in the circumstances of this case.

32 The DJ held that s 178 of the MSA but not s 180 of the MSA, has this effect.

33 In this Appeal, it is common ground between the Appellant, the Prosecution and Mr Lim that the DJ erred in this holding. All of them agree that the scope of s 178 of the MSA is confined to offences committed under the MSA, and so does not extend to offences under the Penal Code.

34 The Prosecution contends that s 180 of the MSA has the effect of extending the application of the relevant Penal Code offences extraterritorially. The Appellant and Mr Lim, on the other hand, dispute this albeit for different reasons. While Mr Lim accepts that s 180 permits the extraterritorial application of the relevant Penal Code provisions in certain circumstances, he contends that properly interpreted, s 180 does not apply to passengers on board a foreign-flagged ship. The Appellant, on the other hand, argues that s 180 does not extend the reach of the relevant Penal Code provisions extraterritorially. Instead, he maintains that s 180 is only concerned with the Singapore courts' jurisdiction to try offences committed where the requirements under that provision are met, though the Appellant also maintains that s 180 does not apply in this case for the same reason advanced by Mr Lim.

35 As mentioned earlier, we also directed the parties to consider the effect and application of s 3 of the Penal Code.

36 Mr Lim's primary submission is that s 3 of the Penal Code is concerned with the power or authority of a Singapore court to hear and determine a matter where the offence was committed outside Singapore. In other words, Mr Lim maintains that this is a jurisdictional provision rather than an extraterritorial application provision. Tracing the roots of s 3 of the Penal Code to its equivalent

provision under the Indian Penal Code 1860 (the "IPC"), Mr Lim submits that whereas s 3 of the IPC is a jurisdictional provision, s 4 of the IPC is an extraterritorial application provision. It is only when ss 3 and 4 of the IPC are read together that the IPC may be given extraterritorial effect. Given that s 4 of the Penal Code is much more limited in scope than s 4 of the IPC (in that s 4 of the Penal Code is confined to public servants), s 4 of the Penal Code does not have the effect of extending the extraterritorial application of Penal Code offences in the present case.

37 The Appellant accepts that s 3 of the Penal Code is an extraterritorial application provision provided there is an applicable jurisdictional provision that empowers a Singapore court to exercise its authority to hear the matter. As noted above, he accepts also that s 180 of MSA is a jurisdictional provision. However, the Appellant submits that passengers on a foreign ship are excluded from the operation of s 180 of the MSA, and the Singapore court therefore does not have jurisdiction in the present case because he was a passenger. The Appellant accepts that s 50(2) of the SCA can be read as a jurisdictional provision.

38 The Prosecution accepts that on one reading of s 3 of the Penal Code, it extends the application of all Penal Code offences extraterritorially. The Prosecution also forwards an alternative reading of s 3: namely that it does not extend the extraterritorial application of the offence-creating provisions in the Penal Code, but only does so for other provisions such as the defences and general exceptions contained in the Penal Code.

Our Decision

Section 178 of the MSA

39 We deal first with the interpretation of s 178 of the MSA, which in our view may be disposed of briefly. Section 178 of the MSA reads:

> **Provision as to jurisdiction in case of offences**
>
> **178.** For the purpose of giving jurisdiction under this Act, every offence is deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the offence actually was committed or arose or in any place in which the offender or person complained against may be.

40 The DJ held that s 178 of the MSA extends the extraterritorial reach of the relevant statutory offences under the Penal Code: Judgment at [13(a)]. He arrived at this conclusion after taking into consideration both the plain wording of s 178 and its purpose based on the context and the relevant extrinsic materials:

(a) On its plain wording, s 178 of the MSA provides that acts committed by an accused person shall be deemed to have taken place at either of two locations: namely, where the criminal act was in fact committed or where the accused person is later found. The first of these seems tautologous in the sense that there is no need to deem that an act took place where it in fact took place. The real purpose of the provision is in enabling the legal fiction that an act shall be taken to have occurred where the accused person is subsequently found, even if it did not take place there. Thus, the DJ held that if the location where the offence actually was committed was outside Singapore and the offender is later found in Singapore, the offender is considered to have committed the offence in Singapore: see Judgment at [50]. The DJ considered such a reading to be supported by a purposive interpretation of s 178, in that it

would better promote the overall purpose of the MSA which is to "protect the public and national interests – by ensuring that the authorities and the courts have the ability to prosecute, try and convict persons who commit offences on ships extraterritorially": see Judgment at [57] and [61].

(b) The DJ interpreted the word "every offence" in s 178 of the MSA to mean "every act or omission which has been defined to be illegal in any Singapore legislation": see Judgment at [48]. In the DJ's view, the ordinary meaning of the word "every offence" does not impose any restrictions as to the type of offences that can come within its scope. This may be contrasted with other provisions under the MSA which qualify the word "offence" with the words "under this Act" or words to similar effect. Because the DJ thought that the plain meaning of the words in this context was clear, it was not necessary in his view to refer to any extrinsic materials, though he noted that these were inconsistent with the ordinary meaning of the words "every offence": see Judgment at [47].

41 We agree with the DJ's analysis and his conclusions in part. In our judgment, s 178 of the MSA is an extraterritorial application provision which operates by deeming acts committed abroad as having been committed wherever the accused person may be located. It is clear that this aspect of the provision will invariably be invoked where the accused person is in Singapore. We disagree, however, with the DJ's conclusion that the scope of s 178 includes *every* act or omission constituting a criminal offence under any statute, and not just under the MSA.

42 To begin, we do not think the ordinary meaning of the words "every offence" in s 178 of the MSA is clear and unambiguous. We accept that those

words may be read as broadly as the DJ thought they ought to be. However, as we have already noted at [14(a)] above, the purposive approach to statutory interpretation, requires in the first instance, that the possible interpretations of the provision be ascertained. This is done by having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.

43 In *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659, the Court of Appeal highlighted at [108] the "relevance and importance of ***context*** in determining the intended meaning of a word or phrase" [emphasis in original in bold italics].

44 Section 178 of the MSA is located in Part 10 of the MSA, which concerns legal proceedings that are commenced in relation to matters dealt with in the MSA. For example, s 181 of the MSA provides for a presumption of jurisdiction "in any legal proceedings *under this Act*" [emphasis added]. Therefore, reading s 178 in the context of the overall legislative framework of the MSA, and in particular its location in Part 10 of the MSA, we think that the words "any offence" could be construed as referring to offences under the MSA.

45 More importantly, the opening words of s 178 of the MSA state that its purpose is to give "jurisdiction *under this Act*" [emphasis added]. In our judgment, this strongly suggests that the provision was concerned with enabling the enforcement of the provisions of the MSA, which fortifies the point we have made in the previous paragraph. It follows that the words "every offence" is open to at least two possible interpretations, namely offences under the MSA or offences generally under Singapore criminal law.

46 To resolve this ambiguity, we consider it appropriate to consider any relevant extrinsic material that might assist with ascertaining the correct interpretation of the words “every offence”. This, in our view, is to be found in the Explanatory Statement to the Merchant Shipping Bill 1995, which contains a clear and unequivocal statement that s 178 of the MSA “makes provision as to jurisdiction *in respect of offences under the [MSA]*” [emphasis added]. In so far as the DJ rejected the relevance of this extrinsic material because he considered that it “appears to be inconsistent with the ordinary meaning of the words ‘every offence’ in s 178” (see Judgment at [47(e)]), we think, with respect, that he fell into error. In the present circumstances, we are satisfied that reference to extrinsic material is permissible and indeed necessary in light of the ambiguity present on a textual interpretation of s 178 (read in its context) and this leads us to conclude that the DJ erred on this point.

47 The broad reading of these words as suggested by the DJ would, in Mr Lim’s words, “expand the scope of s 178 far beyond what appears to have been envisaged by Parliament”. It follows that s 178 does not permit the extraterritorial application of offences under the Penal Code.

Section 3 of the Penal Code

48 We turn next to consider s 3 of the Penal Code, which reads as follows:

> **Punishment of offences committed beyond, but which by law may be tried within Singapore**
>
> **3.** Any person liable by law to be tried for an offence committed beyond the limits of Singapore, shall be dealt with according to the provisions of this Code for any act committed beyond Singapore, in the same manner as if such act had been committed within Singapore.

49 On its plain reading, s 3 of the Penal Code makes clear that acts committed by an accused person outside the territory of Singapore shall be

treated as having been committed within Singapore, *provided the Singapore courts have the jurisdiction to try the person for committing such an offence beyond the territory of Singapore*. This is plain to see when we break s 3 down into two parts:

(a) The first part consists of the words "[a]ny person liable by law to be tried for an offence committed beyond the limits of Singapore". We term this the "Condition Limb". On a plain reading, the Condition Limb refers to some other provision of law that permits a person to be tried in Singapore for an offence committed outside the territory of Singapore. The Condition Limb in effect requires as a prerequisite that there exists an applicable jurisdictional provision in the sense set out at [16]–[17] above.

(b) The second part consists of the words "shall be dealt with according to the provisions of this Code for any act committed beyond Singapore, in the same manner as if such act had been committed within Singapore". We term this the "Operative Limb". On a plain reading, the Operative Limb states that an act that is criminalised under the Penal Code, may, if it were committed outside the territory of Singapore, be deemed to have been committed within Singapore provided the Condition Limb is satisfied.

50 In our judgment, there is no ambiguity in the language of s 3 of the Penal Code. When the provision is read as a whole, the Operative Limb permits the extraterritorial application of Penal Code offences to cover offending acts committed outside the territory of Singapore, so long as the Condition Limb is satisfied. In short, there must be a jurisdictional provision empowering the Singapore court to try a person for an alleged offence committed outside of

Singapore. Indeed, when we directed the parties to consider the interpretation and effect of s 3, they were in general agreement with this view. We note, in particular, the concession made by the Appellant, as well as the Prosecution's concurrence, that s 3 of the Penal Code "extends the territorial ambit of offences under the Penal Code". Since there is no ambiguity in the language of s 3 of the Penal Code, it is strictly speaking not necessary to consider extrinsic material to inform our interpretation of this provision.

51 Even so, the legislative history of s 3 of the Penal Code fortifies our view that its effect is to enable the extraterritorial application of offences under the Penal Code, provided there exists a statutory basis conferring on the Singapore courts the authority to try offences committed extraterritorially. Our Penal Code traces its origins to the IPC. The IPC was enacted as law in Singapore on 16 September 1872 through Ordinance IV of 1871 when Singapore was part of the Straits Settlement: see *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [128].

52 It is significant that s 3 of the IPC is worded in substantively the same language as s 3 of the Penal Code:

> **3. Punishment of offences committed beyond, but which by law may be tried within, India.**
>
> Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

53 Section 3 of the IPC is discussed in W W Chitaley and V B Bakhale, *Indian Penal Code (XLV of 1860) Vol 1* (The All India Reporter Ltd, 3rd Ed, 1980), where the learned authors observe (at p 21):

> The section postulates that, before a person committing an offence beyond the limits of India can be dealt with under the provisions of the Penal Code, there must be an Indian "law" which provides for the trial of such person in India, and that in the particular case the requirements of such provision for such trial are satisfied. Section 188 of the Criminal Procedure Code, 1973, is a provision of the above kind that enables a person who has committed an offence "outside India" to be "tried" in India. Hence, the provisions of that section must be satisfied before a person who has committed an offence outside India can be tried in India and subjected to a punishment prescribed by the [IPC].
>
> Section 188 of the Criminal Procedure Code deals with two classes of persons who commit offences outside India:
>
> > (1) Indian citizens; …
> >
> > …
>
> In the case of an "Indian citizen" committing an offence outside India, he will be liable to be tried at any place where he may be found in India, "wherever" he may have committed the offence. …

54 Hence, s 3 of the IPC permits persons who have committed acts abroad that would constitute an offence punishable under the IPC to be tried before the Indian courts, provided there exists a separate jurisdictional provision conferring on the Indian courts the power to try such offences. In the case of Indian law, this jurisdictional provision is found in s 188 of the Indian Criminal Procedure Code 1973, in relation to Indian citizens.

55 Despite several major amendments undertaken by the legislature in reviewing the Penal Code, s 3 of the Penal Code has remained substantially intact since its adaptation from the IPC into the Straits Settlement Penal Code. While there is no direct Parliamentary debate relating to s 3 of the Penal Code and its adaptation from the IPC, that s 3 of the Penal Code has been preserved in its original state since its adaptation suggests that Parliament intended for s 3 of the Penal Code to operate in the same manner as s 3 of the IPC.

56 In our judgment, the Condition Limb of s 3 of the Penal Code is satisfied in this case by s 50(2)(*c*) of the SCA, which empowers the District Court to try offences committed "by any person who is a citizen of Singapore on the high seas" (see [23] above). Since the Appellant is a Singapore citizen who broke into the Victim's cabin and stole her brassiere while on the high seas on board the Ship, the requirements of the Condition Limb are met. It follows that under the Operative Limb, the Appellant's acts will be treated as though they occurred in Singapore, and therefore he has committed acts that are punishable under ss 380 and 451 of the Penal Code.

57 We are also satisfied that reading s 3 of the Penal Code with s 50(2) of the SCA (or for that matter s 15 of the SCJA (which deals with the criminal jurisdiction of the General Division of the High Court) or s 51 of the SCA (which deals with the criminal jurisdiction of the Magistrates' Courts) will not lead to the overly-wide extraterritorial application of the Penal Code so as to render persons unreasonably liable for acts committed abroad which are criminalised under the Penal Code. We emphasise, in particular, that these jurisdictional provisions all require a material *nexus* to Singapore. Section 50(2) of the SCA, for instance, states that the District Court will only have criminal jurisdiction over offences that are committed: (a) *within Singapore*; (b) on board any ship or aircraft *registered in Singapore*; (c) by any person *who is a citizen of Singapore* on the high seas or on any aircraft; and (d) in any place or by any person *if it is provided in any written law* that the offence is triable in Singapore. Thus, no person who has committed in the territory of a foreign state an act which is criminalised in Singapore, shall be liable to be tried in Singapore for having committed an offence under the Penal Code by virtue of s 3, unless there is some other specific legislative provision having this effect.

Our observations on s 180 of the MSA

58 It is therefore not necessary for us to decide on the effect of s 180 of the MSA. Nevertheless, as the parties' submissions centred heavily on s 180 of the MSA, we make some brief observations on this.

59 Section 180 of the MSA provides:

> **Jurisdiction in case of offences on board ship**
>
> **180.** Where any person is charged with having committed any offence on board any Singapore ship on the high seas or elsewhere outside Singapore or on board any foreign ship to which the person does not belong and that person is found within the jurisdiction of any court in Singapore which would have had cognizance of the offence if it had been committed on board a Singapore ship within the limits of its ordinary jurisdiction, that court has jurisdiction to try the offence as if it had been so committed.

60 Section 686(1) of the UK Merchant Shipping Act 1894 ("UK MSA 1894") is in similar terms to s 180 of the MSA. The correct interpretation of s 686(1) has been the subject of debate over the years. We elaborate more on some of the areas of debate when analysing certain aspects of s 686(1) below.

Jurisdictional or extraterritorial application provision

61 The first centres on the *effect* of s 686(1) of the UK MSA 1894, and whether it merely extends the authority of the courts to hear offences or whether it extends the extraterritorial application of offences criminalised under UK law. Professor Williams, for instance, observed in *Venue and the Ambit* (at pp 410–411) that:

> Whether [s 686(1) of the UK MSA 1894] extends the territorial ambit of the criminal law is a puzzling question. The fact that [ss 684 and 685, which are the equivalent of ss 178 and 179 of the MSA] … were concerned only with the provision of competent courts and not with the ambit of law suggests that

> this subsection, appearing under the same heading, is to the like effect. On the other hand, in view of the width of [s 684 of the UK MSA 1894], it would be difficult to see any adequate reason for the enactment of [s 686 (1) of the UK MSA 1894] if the intention were not to deal with the ambit of law.

62 This uncertainty is echoed in Geoffrey Marston, "Crimes by British Passengers on board foreign ships on the high seas: the historical background to section 686(1) of the Merchant Shipping Act 1894" (1999) 58 Cambridge LJ 171 at 195 ("*Crimes by British Passengers*"), where the predecessor provision to s 686(1) of the UK MSA 1894 is described as at best "merely a venue-creating provision in respect of those crimes which already extended to foreign ships outside the realm" and at worst "totally ineffective to achieve the object of its framers".

63 Evidently, there is uncertainty as to whether s 686(1) of the UK MSA 1894 is a jurisdictional provision or an extraterritorial application provision. This is unsurprising considering that the distinction between "jurisdiction" and "extraterritorial application" was only developed in jurisprudence much later. Therefore, s 686(1) of the UK MSA 1894 was likely enacted without an awareness of this distinction.

64 The effect of the House of Lords' decision in *R v Kelly* [1982] AC 665 ("*Kelly*") was that s 686(1) of the UK MSA 1894 came to be read as an extraterritorial application provision (see *Crimes by British Passengers* at 174). Indeed, the parties there proceeded on the basis that s 686(1) of the UK MSA 1894 is an extraterritorial application provision. We elaborate on *Kelly* at [78]–[79] below.

65 However, we think there is sufficient reason to read s 686(1) of the UK MSA 1894 as a jurisdictional provision. First, this can be inferred from the title

of s 686(1), which states that it provides for "[j]urisdiction in case of offences on board ship". Read contextually, the word "jurisdiction" is used in s 686(1) to refer to the court's authority to try such offences, as seen in the words "that court shall have jurisdiction to try the offence as if it had been so committed". Second, the use of the word "offence" rather than the words "act or omission" suggests the existence of some other extraterritorial application provision which deems the act or omission committed abroad as having been committed in the UK and therefore constituting an "offence" under UK criminal law. Accordingly, in our provisional view, s 686(1) appears to be a jurisdictional provision, and so too does s 180 of the MSA.

66 We turn to consider other issues relating to the interpretation of s 180 of the MSA.

The scope of s 180 of the MSA

67 Before us, it was suggested that s 180 of the MSA is not confined to offences under the MSA, and the words "any offence" means any offence recognised under Singapore law, whether under the MSA, the Penal Code or otherwise. This stems from the absence of any qualification of those words with words such as "under this Act" or "in this Act".

68 However, it seems to us that reading s 180 of the MSA in this way could lead to the conclusion that *any* person of *any* nationality may be charged with any offence recognised as a crime in Singapore, simply by virtue of their presence in Singapore, so long as the relevant act or omission occurred on a ship.

69 Section 180 of the MSA lists three different locations where the subject offence may have been committed:

(a) on board any Singapore ship on the high seas ("Scenario 1");

(b) on board any Singapore ship elsewhere outside Singapore ("Scenario 2"); or

(c) on board any foreign ship to which the person does not belong ("Scenario 3").

70 For these scenarios, s 180 of the MSA provides that if the person who commits the offence "is found within the jurisdiction of any court in Singapore which would have had cognizance of the offence if it had been committed on board a Singapore ship within the limits of its ordinary jurisdiction" then "that court has jurisdiction to try the offence as if it had been so committed".

71 The Singapore court's ability to exercise jurisdiction in Scenario 1 and Scenario 2 is unexceptional. As we have noted at [57] above, s 50(2) of the SCA also confers on the Singapore court jurisdiction to try offences that occur in such situations. The difficulty lies with Scenario 3, which does not have a clear Singapore nexus. If we were nonetheless to accept the Prosecution's submission that the provision in Scenario 3 provides a Singapore nexus for *any* offence recognised under Singapore law, it would mean that the Singapore courts would have jurisdiction to try any person who commits any offence on any foreign ship "to which he does not belong", so long as he is later found within the jurisdiction of the court.

72 We will return to the meaning of those words "to which he does not belong". Leaving those words aside for a moment, we consider the example of a foreign national who does an act that could amount to an offence under the Penal Code on a foreign-flagged ship, which subsequently docks in Singapore transitorily. Should s 180 of the MSA be applied in the manner suggested by the

Prosecution, it would mean that that foreign national could be tried in Singapore, even though that person's only link with Singapore is his transitory presence within Singapore's territorial borders. And the Prosecution further suggests that in such a case, Singapore's criminal law would apply extraterritorially, also by virtue of s 180.

73 The Prosecution suggests that the sensible exercise of prosecutorial discretion would provide sufficient assurance against the concern we expressed that the scope of s 180 on this basis seemed to be much too wide. The Prosecution also suggests that extending the Singapore court's jurisdiction in this way is unexceptional and can be analogised to Singapore's air travel laws. In particular, s 3(2) of the Tokyo Convention Act 1971 (2020 Rev Ed) ("Tokyo Convention Act") empowers the Singapore courts to be seized of jurisdiction over offences committed by foreigners in international airspace on board a foreign-registered aircraft, even if the aircraft only temporarily lands in Singapore.

74 As a preliminary point, it seems to us that s 3(2) of the Tokyo Convention Act is an extraterritorial application provision. Section 3(2) provides that if: (a) an act or omission taking place on board any aircraft (not being a Singapore-controlled aircraft) while in flight elsewhere than in or over Singapore which, if taking place in Singapore, would constitute an offence under the law in force in Singapore; and (b) the aircraft *subsequently* lands in Singapore with the person who committed the act or omission *still* on board the aircraft, the act or omission constitutes that offence. The conversion of the "act or omission" into an "offence" suggests that s 3(2) is fundamentally an extraterritorial application provision. To this extent, s 3(2) cannot readily be analogised with s 180 of the MSA, which in our provisional view seems more likely to be a jurisdictional provision.

75 In any case, there are three further difficulties with the Prosecution's argument. First, the words "subsequently" and "still" in s 3(2) of the Tokyo Convention Act suggests that the offender's presence in Singapore must almost immediately succeed the commission of the offence. This imposes a significant temporal limitation on the operation of the provision. Indeed, it seems to us that the provision was designed to overcome the impracticability of having to deal with offenders on an aircraft that is travelling at speed in the airspace of multiple jurisdictions and in international airspace. No such limiting words are present in s 180 of the MSA. Second, while prosecutorial discretion may be one factor limiting the *practical* application of s 180, the fact remains that, as a matter of law, s 180 of the MSA could lead to a far-reaching basis of jurisdiction as we have outlined above. And as valuable as it is, prosecutorial discretion does not have the same institutional constraints that come with reading a statutory provision that purports to extend the usual jurisdictional ambit of the court and/or the extraterritorial reach of the criminal law in a way that sensibly limits its operation. Third, the rules developed for air travel are also likely to be somewhat unique because of the particular need, by reason of safety and security concerns, to ensure that neither jurisdictional nor extraterritoriality concerns should impede effective enforcement.

Limiting s 180 of the MSA to offences punishable under the MSA

76 It may be possible to address the concerns we have referred to by reading s 180 as applying only to offences under the MSA. Our provisional view is that this seems to be supported by its context and is consonant with the overall purpose of the MSA.

77 We note that when the MSA was enacted, it was stated that the overarching purpose of the MSA is to govern the functions of the Marine

Department and provide for regulation in respect of the shipping industry (see *Singapore Parliamentary Debates Official Report* (1995) Vol 64, Col 1140 (Speech by Mr Goh Chee Wee, Minister of State for Communications)):

> The existing Merchant Shipping Act (1985 edition) was inherited from the British and contained many provisions governing various aspects of the functions of the Marine Department. As part of its regular review of legislation to bring it in line with current international practices and our needs, the Marine Department had done a complete review of the Act. In the course of the review, the Marine Department had consulted various public and private sector organisations involved such as shipowners through the Singapore National Shipping Association, seafarers through their unions, shipping employers through the Singapore Maritime Employers' Federation, TDB, Immigration Department and PSA. The result is a completely new Merchant Shipping Bill 1995 which seeks to repeal and re-enact with amendments the existing Merchant Shipping Act.
>
> Besides the removal of obsolete provisions and the updating of certain provisions, the new Act will contain the essential provisions while most of the detailed administrative and procedural provisions will be moved to subsidiary legislation. In this way, the new Act will be flexible enough to adapt quickly to continuing changes in the shipping industry. The provisions which are removed and incorporated in the new regulations relate mainly to matters concerning the crew on board Singapore ships like crew agreements, the engagement and discharge of seamen, payment of wages and account of wages, and the keeping of official log books.

78 It is then appropriate to briefly address the decision of the House of Lords in *Kelly*. In *Kelly*, the appellants, who were British subjects, were passengers on board a Danish ship *en route* from England to Denmark. While the ship was on the high seas, the appellants damaged fittings on the ship and were subsequently charged under the UK Criminal Damage Act 1971. The appellants contended that the UK courts lacked jurisdiction. The House of Lords considered s 686(1) of the UK MSA 1894. Lord Roskill (on behalf of a unanimous court) considered that the word "offence" in s 686(1) refers to "the acts done on the foreign ship alleged to constitute the offence", and that the

words "that court shall have the jurisdiction to try the offence in question 'as if it had been so committed'" could be interpreted as granting the UK courts the jurisdiction to try offenders "as if those acts had been committed … within the limits of the ordinary jurisdiction of the courts within the jurisdiction of which the offenders are found": see *Kelly* at pp 676–677. The House of Lords accordingly construed s 686(1) as an extraterritorial application provision and held that it was not limited to offences under the UK MSA 1894, but extended the extraterritorial application of the UK Criminal Damage Act 1971.

79 We are not bound to follow *Kelly*. In our view, it is significant that *Kelly* was decided at a time before the distinction between "extraterritorial application provisions" and "jurisdictional provisions" was fully developed and recognised (see [17] above). In *Kelly*, therefore, it seems to us that the House of Lords approached the question of extraterritoriality on the following assumption: as long as the UK courts could find authority to try the case based on a statute, then it would follow that the statute itself or the offence under which the charge was brought would have extraterritorial force. In this way, the House of Lords appears to have conflated the concepts of "jurisdiction" and "extraterritorial application". We respectfully think this may be mistaken but given that a final view on the interpretation of s 180 is not necessary to enable us to determine the present case, we will say no more on *Kelly* and leave this to be reconsidered on a future occasion.

Scenario 3

80 Before we leave s 180 of the MSA, we consider the phrase "on board any foreign ship to which he does not belong". We note that there are two possible constructions of this phrase:

(a) First, only crew members may be understood as "belonging" to a ship. On this basis, a passenger is a person who "does not belong" to the ship, and so would fall within the scope of s 180. This is the view advanced by the Prosecution.

(b) Second, these words could be targeted at addressing the specific mischief where persons board a ship in an unlawful manner and commit an offence on that ship. Such a person, by virtue of their unlawful boarding, may be described as not "belonging" to a ship. Those who are lawfully on a ship would "belong" to the ship, and s 180 on this basis would not apply to passengers. This is the interpretation forwarded by the Appellant and Mr Lim.

81 Section 180 of the MSA can, as we have observed, be traced to s 686(1) of the UK MSA 1894, which in turn may be traced to s 21 of the UK Merchant Shipping Act 1855 and s 11 of the UK Merchant Shipping Act 1867 ("UK MSA 1867"). The reason for the enactment of s 11 of the UK MSA 1867 was considered by the UK Parliament during the second reading speech on the passing of UK Merchant Shipping Bill – (No 180) in the House of Lords on 2 July 1867. In particular, it was recorded that s 11 was enacted in response to an incident where "a small French vessel stranded near the English coast was set upon by some men of Harwich, the captain was subjected to violence, and the ship was taken possession of; yet the offenders escaped unpunished, because their offence was committed on a foreign vessel outside British soil". It appears that the offenders in question had escaped punishment because there was at the time no statutory provision in force providing that a British national who committed an offence on a foreign vessel outside British soil could be punished as if the offence had been committed against an English ship: see United Kingdom, House of Lords, *Parliamentary Debates* (2 July 1867), vol 188 at col

851 (The Duke of Richmond) ("UK Second Reading Speech"). It is not clear whether this observation was made in reference to the lack of a jurisdictional provision, which would have hampered the ability of a court to take cognisance of the matter, or of an extraterritorial application provision, which would have meant there was no applicable prohibition in law. In any case, s 11 was enacted to fill a perceived gap in the law though the precise contours of the gap were not defined.

82 For the purpose of interpreting the words "to which he does not belong", the UK Second Reading Speech alone does not seem to us to shed any light. Construing those words narrowly to refer only to unwanted persons on the ship would achieve the legislative objective of punishing a British national who committed an offence recognised under English law against a foreign vessel outside British territory; but so too would construing the words more broadly to refer to unwanted persons *and* passengers.

83 According to the Appellant and Mr Lim, this ambiguity may be resolved by applying the principle against doubtful penalisation. In *Kong Hoo (Pte) Ltd and another v Public Prosecutor* [2019] 1 SLR 1131, the High Court held at [140]–[141] that the principle against doubtful penalisation requires a court to construe an ambiguous provision strictly and in a way that is more lenient or advantageous to the accused. Construed narrowly, therefore, s 180 of the MSA would only confer jurisdiction over those who are on a ship unlawfully, and not passengers on a cruise ship who could be said to "belong" to the ship.

84 However, the principle against doubtful penalisation is a "tool of last resort". In *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 604, this court summarised its operation as follows (at [28(b)]):

> The strict construction rule is a "tool of last resort" to which recourse may be had only if there is genuine ambiguity in the meaning of the provision *even after* the courts have attempted to interpret the statute purposively. If the meaning of the provision is sufficiently clear after the ordinary rules of construction have been applied, there is no room for the application of the strict construction rule …
>
> [emphasis in original]

85 Therefore, the first port of call remains the words of the provision and the meaning of those words when interpreted according to the ordinary rules of construction. It is only if ambiguity persists even after the court has employed everything in its toolkit to interpret the provision, that recourse to the principle against doubtful penalisation may be warranted.

86 With these principles in mind, we consider those words in s 180 of the MSA, "on board any foreign ship to which he does not belong". Their effect is that those who do not "belong" to a foreign ship are amenable to Singapore jurisdiction, but not those who do belong to such a ship. This raises the question *why* there is such a carve-out for those "belonging" to a foreign ship but not a Singapore ship, and not for those who do not belong to a foreign ship.

87 In our view, albeit again provisionally, the answer to this may be found in: (a) the surrounding provisions in the MSA; (b) the general rule that matters concerning a ship's crew stand to be governed by the flag State; and (c) the policy imperatives that necessitate such a rule.

88 First, as the Prosecution points out, the word "belong" is used in conjunction with "crew members" in other provisions of the MSA: see for instance, ss 67, 111 and 203(2) of the MSA. Therefore, if "belong" is to have a consistent meaning throughout the MSA, the phrase "does not belong" in s 180 of the MSA should be read as excluding crew members. This conclusion is

reinforced by Part 4 of the MSA, which is titled "Crew Matters" and contains offence-creating provisions for the *crew*. Section 52(3) of the MSA provides that Part 4 of the MSA only applies to Singapore ships. This recognises that Singapore exercises jurisdiction over the crew onboard Singapore-flagged ships, regardless of whether the ship is on the high seas or in territorial waters. Therefore, on the premise that the same arrangement would typically be in place with other flag states (as to which see below), it seems logical that s 180 of the MSA would provide for a carve-out for *crew members* "belonging" to a foreign ship because such persons would already be subject to the jurisdiction of the flag State and it would be desirable to avoid the potential difficulties that might arise if they were also subject to the jurisdiction of the Singapore courts.

89 Second, this reading is consistent with and supported by the general rule in international law that the flag State exercises exclusive jurisdiction over the crew. As the Court of Appeal held in *Zyfas Medical Co (sued as a firm) v Millennium Pharmaceuticals, Inc* [2020] 2 SLR 1044 at [45], "[l]ocal legislation is to be interpreted as far as possible to be consonant with Singapore's treaty obligations and not in derogation thereof". In that regard, Singapore is a party to the United Nations Convention on the Law of the Sea ("UNCLOS"). Article 94 of the UNCLOS provides that the flag State assumes jurisdiction under its internal law over the crew, subject to the exception in Art 97, which provides that criminal jurisdiction can be concurrently exercised by the country which the crew is a national of in the event of a collision or any other incidents of navigation.

90 We acknowledge the difficulty in using treaty obligations that post-date the enactment of a domestic statute to interpret that domestic statute. Nonetheless, we think this helps shed light on why these arrangements are structured in this way.

91 Third, and in line with what we have set out above, the fact that the crew of the foreign ship is excluded from the operation of s 180 can be explained as an exercise of jurisdictional restraint by Singapore. If a Singapore court could take jurisdiction over the crew of a foreign ship, this could impact the operations of the foreign ship. The rationale for the exercise of jurisdiction by the flag State over the crew has been described as follows (Ronald Stanger, *Criminal Jurisdiction Over Visiting Armed Forces* (United States Government Printing Press, 1965) at pp 45–52):

> … the ship is viewed as an entity to which a status may appropriately be assigned for purposes of jurisdiction. A ship, employed as a unit in a business enterprise, is in a very real sense such an entity. Both safety at sea and the success of the enterprise, which depend on the prompt carriage of passengers and cargo and a minimum time spent in port, require an efficient organization and strict discipline, which ultimately must be sanctioned by the law of some state. The complexity of a ship, moreover, requires officers and seamen with varied, complementary skills. The loss of any one of the officers or seamen may hamper or cripple the operation of the ship. A replacement may be hard to find, particularly in a foreign port. These factors support, though historically they may not have prompted, recognition of the competence of the flag state.
>
> …
>
> Any exemption from the local jurisdiction is, however, limited to incidents involving only the crew, and does not apply where passengers or strangers to the vessel are the offenders or, seemingly, the victims. This approach confirms the conclusion that the interests of commerce and navigation – rather than any notions of extraterritoriality – are at the root of the exemption of seamen.

92 Together, these considerations provide what seems to us to be a compelling explanation for construing the words "does not belong" in s 180 to mean those who are not the *crew members* of a foreign ship.

93 As against this, the Appellant submits that the word "belong" should be construed in accordance with its ordinary and colloquial meaning as "having

permission to be on the ship". In our view, the force of this argument is weakened by s 2 of the MSA, which defines a "pilot" as "any person who does not belong to, but has the conduct of, a ship". It cannot be disputed that a pilot has permission to be on a ship. Yet, he is described as not "belonging" to the ship under the MSA. This indicates that the word "belong" in the MSA does not simply mean "having permission to be on the ship" and indeed, this further supports the view that those who belong to a ship are its crew. Hence, a pilot, not being a crew member, does not belong to the ship, but has conduct of it, inevitably with the permission of the captain.

94 We therefore conclude, albeit on a provisional basis since it is not necessary for us to decide this matter, that the words "on board any foreign ship to which he does not belong" means those who are not crew members of a foreign ship.

Conclusion

95 It follows from what we have said that the appeal is dismissed. However, we come to this conclusion for reasons that vary from those of the DJ. Whereas the DJ directed that the original charges brought against the Appellant be framed under ss 380 and 451 of the Penal Code read with s 178 of the MSA, our holding that s 3 of the Penal Code applies to extend the extraterritorial reach of the Penal Code provisions means that it is necessary in the circumstances for us to amend the Charges. In particular, the Charges should be amended such that ss 380 and

451 of the Penal Code are to be read together with s 3 of the Penal Code and s 50(2) of the SCA.

96 Section 390(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") empowers this court to frame an altered charge, and it provides:

> **Decision on appeal**
>
> **390.**—…
>
> …
>
> (4) Despite any provision in this Code or any written law to the contrary, when hearing an appeal against an order of acquittal or conviction or any other order, the appellate court may frame an altered charge (whether or not it attracts a higher punishment) if satisfied that, based on the records before the court, there is sufficient evidence to constitute a case which the accused has to answer.

97 The first charge is currently framed as follows:

> You,
>
> Name : Ng Kok Wai
>
> Sex/Age : Male/ 29 years old
>
> NRIC : [XXX]
>
> Nationality : Singapore citizen
>
> D.O.B : [XXX]
>
> are charged that you, on the 13th day of December 2021 at about 6.00 p.m., as a passenger on board the Bahamas-registered cruise vessel "World Dream" ("the Vessel") on the high seas in South China Sea to which you did not belong, at cabin room No. 11180 ("the Cabin") located on-board the Vessel, did commit house-breaking in order to commit an offence punishable with imprisonment, to wit, by trespassing and entering into the Cabin in the possession of one Chew Yee Mean, which was used as a human dwelling, by climbing over the balcony of the Cabin to gain access into the Cabin in order to commit theft, and you have thereby committed an offence punishable under section 451 of the Penal Code (Cap 224, 2008 Rev Ed) read with sections 178 and 180 of the Merchant Shipping Act (Cap 179, 1996 Rev Ed).

98 We amend the first charge as follows:

> You,
>
> Name : Ng Kok Wai
>
> Sex/Age : Male/ 30 years old
>
> NRIC : [XXX]
>
> Nationality : Singapore citizen
>
> D.O.B : [XXX]
>
> are charged that you, on the 13th day of December 2021 at about 6.00 p.m., as a *citizen of Singapore* on board the Bahamas-registered cruise vessel "World Dream" ("the Vessel") on the high seas in South China Sea, at cabin room No. 11180 ("the Cabin") located on-board the Vessel, did commit house-breaking in order to commit an offence punishable with imprisonment, to wit, by trespassing and entering into the Cabin in the possession of one Chew Yee Mean, which was used as a human dwelling, by climbing over the balcony of the Cabin to gain access into the Cabin in order to commit theft, and you have thereby committed an offence punishable under section 451 of the Penal Code (Cap 224, 2008 Rev Ed) read with *section 3 of the Penal Code (Cap 224, 2008 Rev Ed) and section 50(2)(c) of the State Courts Act 1970 (2020 Rev Ed).*
>
> [emphasis added to denote the amendments]

99 The second charge currently is framed as follows:

> You,
>
> Name : Ng Kok Wai
>
> Sex/Age : Male/ 29 years old
>
> NRIC : [XXX]
>
> Nationality : Singapore citizen
>
> D.O.B : [XXX]
>
> are charged that you, on the 13th day of December 2021 at about 6.00 p.m., as a passenger on board the Bahamas-registered cruise vessel "World Dream" ("the Vessel") on the high seas in South China Sea to which you did not belong, at cabin room No. 11180 ("the Cabin") located on-board the Vessel, which was used as a human dwelling, did commit theft, to wit, you dishonestly took one "Sixty-Eight"-branded bra valued at $30 and one luggage out of the possession of Chew

> Yee Mean, and you have thereby committed an offence punishable under Section 380 of the Penal Code (Cap 24, 2008 Rev Ed) read with sections 178 and 180 of the Merchant Shipping Act (Cap 179, 1996 Rev Ed).

100 We amend the second charge as follows:

> You,
>
> Name : Ng Kok Wai
>
> Sex/Age : Male/ 30 years old
>
> NRIC : [XXX]
>
> Nationality : Singapore citizen
>
> D.O.B : [XXX]
>
> are charged that you, on the 13th day of December 2021 at about 6.00 p.m., as a *citizen of Singapore* on board the Bahamas-registered cruise vessel "World Dream" ("the Vessel") on the high seas in South China Sea, at cabin room No. 11180 ("the Cabin") located on-board the Vessel, which was used as a human dwelling, did commit theft, to wit, you dishonestly took one "Sixty-Eight"-branded bra*ssiere* valued at $30 and one luggage out of the possession of Chew Yee Mean, and you have thereby committed an offence punishable under Section 380 of the Penal Code (Cap 24, 2008 Rev Ed) read with *section 3 of the Penal Code (Cap 224, 2008 Rev Ed) and section 50(2)(c) of the State Courts Act 1970 (2020 Rev Ed).*
>
> [emphasis added to denote the amendments]

101 In amending the Charges, we have considered whether any prejudice will be caused to the Appellant: see *Sharom bin Ahmad and another v Public Prosecutor* [2000] 2 SLR(R) 541 at [27]; *Public Prosecutor v Tan Khee Wan Iris* [1994] 3 SLR(R) 168 at [7]. We are satisfied there is none. The amendments are only to the provisions extending the extraterritorial application of the offence-creating provisions that the Appellant was charged with. The offence-creating provisions in question remain unchanged.

102 Pursuant to s 390(6) of the CPC, we invite the Appellant to indicate whether he intends to offer a defence to the amended charges.

103 Finally, we wish to record our deep appreciation to Mr Lim for his analysis of the issues and his submissions which assisted us considerably.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Azri Imran Tan, Ashwin Ganapathy and Joshua Chow Shao Wei (I.R.B. Law LLP) for the appellant;
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