Lim Li Ling v Public Prosecutor
[2006] SGHC 184

Case Number : MA 76/2006

Decision Date : 19 October 2006

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : RS Bajwa (Bajwa & Co) for the appellant; Hay Hung Chun (Deputy Public Prosecutor) for the respondent

Parties : Lim Li Ling — Public Prosecutor

Criminal Law – Statutory offences – Common Gaming Houses Act – Offender charged and pleading guilty to charge for assisting carrying on of public lottery under s 5(a) Common Gaming Houses Act – Offender sentenced to term of imprisonment and fine – Whether term of imprisonment under s 5(a) mandatory while fine optional – Section 5(a) Common Gaming Houses Act (Cap 49, 1985 Rev Ed)

Criminal Procedure and Sentencing – Sentencing – Forms of punishment – Scope of jurisdiction to grant probation for offence under s 5(a) Common Gaming Houses Act where offender not young offender – Meaning of phrases "mandatory minimum sentence" and "specified minimum sentence" – Section 5(a) Common Gaming Houses Act (Cap 49, 1985 Rev Ed), s 5(1) Probation of Offenders Act (Cap 252, 1985 Rev Ed)

19 October 2006

Tay Yong Kwang J:

1 This was an appeal against sentence. The appellant, a 34-year-old female, was charged with and pleaded guilty to assisting in the carrying on of a public lottery under s 5(*a*) of the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) ("CGHA"). The material facts were not in contention and were as set out in the agreed statement of facts. In summary, the appellant had committed the offence in question by helping to carry on an illegal "10,000 characters" lottery (also known as "4D"). Her areas of responsibility extended to keying betting data received from 4D collectors into her laptop and transmitting this data to an unidentified location in Johor Baru. These activities were conducted from the appellant's sister's home. When the police raided this place, they found 84 pieces of faxed paper which recorded more than $55,000 worth of betting stakes.

2 The charge against the appellant under the CGHA read:

> You, Lim Li Ling, F/34 yrs, NRIC: S7105204D, are charged that you on or about the 26th day of November 2005 at or about 5.30 p.m., at Number 18-D St Michael's Road, Singapore, did assist in carrying on of a public lottery, to wit, "10,000" characters, and you have thereby committed an offence punishable under Section 5(a) of the Common Gaming Houses Act, Chapter 49.

Following her plea of guilt, the appellant was sentenced to six months imprisonment and a fine of $200,000, with 12 months' imprisonment in default. She then filed the present appeal to the High Court against her sentence.

3 After hearing the arguments presented by both counsel, I allowed the appeal *in part* by reducing the fine to $80,000, with four months imprisonment in default. The six-month imprisonment term was left unaltered. I now give my reasons.

4 At this preliminary juncture, I pause to highlight that the present case was of particular significance because it occasioned a reconsideration of the erstwhile sentencing practice *vis-à-vis* offences under s 5(*a*) of the CGHA ("s 5(*a*)"). Section 5(*a*) provides as follows:

> **Assisting in carrying on a public lottery, etc.**
>
> **5.** Any person who —
>
> (a) assists in the carrying on of a public lottery;
>
> …
>
> shall be guilty of an offence and *shall be liable* on conviction to a fine of not less than $20,000 and not more than $200,000 and *shall also be punished* with imprisonment for a term not exceeding 5 years.
>
> [emphasis added]

For the reasons set out below, I was of the view that the current practice of treating *both* the sentences of fine *and* of imprisonment under s 5(*a*) as mandatory was erroneous.

The proceedings before the magistrate

5 As stated at the outset, the prosecution and defence were generally agreed on all material facts relating to the commission of the offence. A *Newton* hearing was originally fixed to resolve certain areas of factual dispute. This hearing was subsequently vacated because parties reached an agreement on the facts as reflected in the statement of facts. The case thus proceeded directly to sentencing before the magistrate.

6 In her mitigation plea before the magistrate, the appellant relied on the fact that she had, at the material time, been afflicted with post-partum depression and carpal tunnel syndrome. According to her counsel, she was constantly tormented by a strong sense of guilt because these illnesses had placed her family under immense financial pressure. It was in this fraught state that she agreed to assist in the illegal data entry of 4D numbers. Counsel for the appellant urged the magistrate to take a compassionate view of the appellant's circumstances. In view of the appellant's medical condition, her counsel urged the magistrate to call for a pre-sentence report with a view to placing the appellant on probation.

7 The prosecution in turn confined itself to highlighting that probation was *not* appropriate in view of the appellant's age and the nature of her offence, and left the question of sentence to the magistrate's discretion.

8 The magistrate rejected counsel for the appellant's submissions and agreed with the prosecution that this was a case where probation was not appropriate, principally because the offence was a serious one, involving high betting stakes, use of high-technology equipment and also the involvement of syndicated operations: *PP v Lim Li Ling* [2006] SGMC 8 ("*Grounds of Decision*") at [4] and [5]. The magistrate went on to observe that incarceration, as mandated by s 5 of the CGHA, would not be inappropriate on the present facts as incarceration would ensure the appellant's rehabilitation whilst at the same time arresting any suicidal tendencies that she might display under the watchful eyes of the wardens: *Grounds of Decision* at [6].

9 On the issue of the appropriate *quantum* of punishment, the magistrate began by observing that s 5 of the CGHA imposed a *mandatory* sentence of imprisonment *and* fine: *Grounds of Decision* at [10] and [11]. The magistrate generally gave little weight to the appellant's need to discharge her role as a mother. Though he was sympathetic to the appellant's family, and more particularly her child, he did not doubt that the appellant had family members who would take care of the child's welfare whilst she was being rehabilitated: *Grounds of Decision* at [11]. In light of the high value of bets (to the amount of $55,106.20), the sophisticated equipment used to transmit the data, and the appellant's involvement with an intricate cross-border syndicate, the magistrate was of the view that the statutory *maximum* fine of $200,000 should be imposed: *Grounds of Decision* at [11] and [12]. However, as the appellant was a first offender who had pleaded guilty and in view of the circumstances leading to her commission of the offence, a six-month term of imprisonment was considered sufficient: *Grounds of Decision* at [12]. The total sentence imposed on the appellant was accordingly a term of six months' imprisonment and a fine of $200,000.

The appeal

10 Dissatisfied with this sentence, the appellant filed the present appeal. In this appeal, counsel for the appellant raised two alternative grounds of contention. The primary relief which the appellant sought was the *substitution* of her sentence with a term of probation. In the event that probation was not granted, the appellant additionally sought a *reduction* of her sentence on the grounds that it was manifestly excessive.

The parties' submissions on appeal

11 The appellant's *primary* ground of appeal was that the magistrate had erred in deciding that probation was inappropriate. Counsel for the appellant submitted that the magistrate had failed to give sufficient weight to the appellant's personal mitigating circumstances such as her string of medical ailments, her affliction with depression and her financial difficulties. Had these factors been properly weighed against the nature of the offence under s 5(*a*), a probation order would have been found to be appropriate in the appellant's circumstances.

12 Second, and in the alternative, counsel contended that the appellant's sentence was *manifestly excessive* and at odds with the established sentencing practice for first offenders under s 5(*a*). In particular, counsel submitted that the magistrate had omitted to record and consider the exact extent of the appellant's role in the *modus operandi* of the public lottery, which had been pleaded as part of her oral mitigation before the magistrate. It was said that whilst the faxed papers found at the appellant's sister's house recorded bets totalling $55,106.20, the appellant had only been responsible for entering bets of approximately $4,000. Her role *vis-à-vis* the balance value of approximately $51,000 was limited to retaining the pieces of faxed paper as backup records in case the relevant entry clerk lost the information.

13 The prosecution responded to the appellant's contentions by raising the following arguments. On the issue of probation, the prosecution submitted that the magistrate had not erred in refusing to grant probation. To begin with, the court's jurisdiction under s 5(1) of the Probation of Offenders Act (Cap 252, 1985 Rev Ed) ("the POA") did not extend to the appellant. In any event, an order of probation would not have been appropriate in the present circumstances. Sentences awarded under s 5(*a*) needed to incorporate a sufficiently deterrent element to reflect the serious nature of such offences. This case involved sophisticated and organised cross-border criminality and the mitigating factors highlighted by the appellant carried little or no weight. The appellant's commission of the offence was attributable to her desire for financial gain rather than to her ill-health.

14 The prosecution additionally submitted that the sentence imposed by the magistrate was reasonable. The appellant's averments regarding her partial involvement in the total value of bets had not been included in the statement of facts, the truth of which the appellant had voluntarily accepted. In any event, this alleged fact did not detract from the appellant's *general involvement* in an illegal public lottery that had cumulatively involved $55,106.20 worth of illegal bets. It was submitted that the magistrate, having accurately distilled the relevant aggravating and mitigating factors, had applied the correct sentencing precedents to the present facts.

The issues arising on appeal

15 In essence, this appeal raised two related, but distinct, questions: (a) whether the magistrate erred in refusing to grant probation; and (b) whether the sentence imposed by the magistrate was in any event manifestly excessive. For the reasons that follow, I held that these two questions should respectively be answered in the prosecution's and the appellant's favour. I accordingly affirmed the magistrate's decision to refuse probation but reduced the sentence of fine imposed on the ground that it was manifestly excessive.

The issue of probation

16 As the prosecution rightly pointed out, the appellant's submissions on the issue of probation raised a preliminary question, *ie*, whether the jurisdiction to grant probation under the POA even existed on the present facts. It was only after the *existence* of this jurisdiction was ascertained that the *appropriateness* of granting the appellant probation would arise for consideration. Having traversed the relevant jurisprudence and legislative debates, I came to the conclusion that there was *no jurisdiction* under s 5(1) of the POA to order probation in respect of offenders such as the appellant. In any event, a probation order *would not have been appropriate* given the facts of the present case.

The jurisdiction to grant probation

17 Section 5(1) of the POA delineates the situations in which a court has the power to make a probation order. This sub-section comprises two components: (a) the main body of the section, which sets out the *general* scope of the court's jurisdiction to grant probation; and (b) the proviso to the section, which *qualifies* the effect of the main body. According to the main body of s 5(1):

> Where a court by or before which a person is convicted of an offence (*not being an offence the sentence for which is fixed by law*) is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him, make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months nor more than 3 years[.] [emphasis added]

The proviso to the section then proceeds to state:

> Provided that where a person is convicted of an offence for which *a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law*, the court *may* make a probation order if the person—
>
> (a) has attained the age of 16 years but has not attained the age of 21 years at the time of his conviction; and

(b) has not been previously convicted of such offence referred to in this proviso …

[emphasis added]

18 From a plain reading, it is not immediately obvious *how* the proviso to s 5(1) qualifies the preceding part of the section. It could do so in one of two ways – either by *adding to*, or by *circumscribing* the category of offences already excluded from the court's jurisdiction by the main body of s 5(1). This ambiguity stems from the fact that both parts of s 5(1) employ differing terminology. Whilst the main body of s 5(1) adopts the criterion of whether the offence in question has a sentence "*fixed by law*", the proviso to the section refers to offences with "*specified minimum … or mandatory minimum*" sentences. It follows from this that the legal effect of the proviso would depend on the relationship between the respective scopes of these differing terms. If "specified minimum" and "mandatory minimum" sentences merely constitute *subsets* of a broader category of sentences "fixed by law", the proviso would *expand the court's jurisdiction* by allowing it to grant probation in circumstances that the main body of s 5(1) would otherwise prohibit. Conversely, if "specified minimum" and "mandatory minimum" sentences form categories *distinct* from sentences "fixed by law", the proviso would *create a further exception to the court's jurisdiction* by limiting the availability of probation for offences with "specified minimum" and "mandatory minimum" sentences to situations where conditions (a) and (b) therein are satisfied.

19 The key to reconciling the two disparate parts of s 5(1) lies in the legislative history behind the provision. Section 5(1) of the POA was first enacted as s 5(1) of the Probation of Offenders Ordinance (Ordinance 27 of 1951) ("1951 Ordinance"). At that time, s 5(1) of the 1951 Ordinance only contained what is currently the*main body* of s 5(1) of the POA. The *proviso* to the current s 5(1) was only added in 1993 to mitigate the effect of the courts' prevailing interpretation of the main body.

The main body of section 5(1) of the Probation of Offenders Act

20 Section 5(1) of the 1951 Ordinance (which contained the *main body* of s 5(1) of the POA) was modelled after the UK Criminal Justice Act 1948 (11 & 12 Geo 6, c58) ("UK Act"): see the Explanatory Statement to the Bill for the *Probation of Offenders Ordinance 1951*. Aside from the duration of probation prescribed, s 5(1) of the 1951 Ordinance was *in pari materia* with s 3(1) of the UK Act. Both these sections conferred the court with jurisdiction to grant probation in respect of all offences, except those which had sentences that were "fixed by law".

21 Whilst the 1951 Ordinance did not define the term "fixed by law" as used in s 5(1), the UK Act actually contained a definition of this term. According to s 80(1) of the UK Act:

> "Offence the sentence for which is fixed by law" means an offence for which *the court is required to sentence the offender to death or imprisonment for life or to detention during His Majesty's pleasure* … [emphasis added]

Hence, under the UK Act, a sentence would only be deemed as being "fixed by law" where one of three *specific* sentences was *mandatory*. It is unclear why the definition of this term was excluded from our local 1951 Ordinance; the relevant Legislative Assembly debates and Explanatory Statement to the Bill for the 1951 Ordinance do not make any reference to this omission.

22 Notwithstanding the omission of the UK definition section from our 1951 Ordinance, it of course remained open to our courts to adopt this meaning as a matter of statutory interpretation. An opportunity to do so arose in *R v Goh Boon Kwan* [1955] MLJ 120 ("*Goh Boon Kwan*"). However,

Murray-Aynsley CJ declined to apply s 80(1) of the UK Act and instead chose to accept the interpretation that had been applied to an equivalent phrase in the UK Criminal Appeal Act 1907 and the local Court of Criminal Appeal Ordinance (Cap 11). According to the then Chief Justice, an offence "for which the sentence is fixed in law" is an offence for which the sentence is "fixed *both* in quantum and in kind" [emphasis added]. This interpretation was in fact conceptually *broader* than the meaning adopted in s 80(1) of the UK Act (see [21] above). Whilst the punishments described in s 80(1) of that Act were indeed sentences "fixed both in quantum and in kind", they were but three *specific* examples of such sentences, *ie*, mandatory death sentences, mandatory life imprisonment terms and mandatory detention at His Majesty's pleasure. (Though strictly speaking, detention at His Majesty's pleasure was not a sentence that was of a definite duration, it was for all intents and purposes "fixed … in quantum" *vis-à-vis* a sentencing court, which would have no discretion to order how long the detention was to last.) Conversely, the term "sentences … fixed by law", as Murray-Aynsley CJ understood it, referred more generally to all offences where the sentencing court was completely stripped of any discretion on the issue of appropriate sentence.

23 Though the approach in *Goh Boon Kwan* was subsequently adopted in a number of other local cases, it was departed from in 1993 by Yong Pung How CJ in the case of *Juma'at bin Samad v PP* [1993] 3 SLR 338 ("*Juma'at*"). In *Juma'at*, the court adopted a more *restrictive* approach to the jurisdiction to grant probation. According to Yong CJ (at 349, [43]):

> [T]he insertion of the phrase 'an offence the sentence for which is fixed by law' clearly indicates that the court's discretion to make a probation order is subordinated to the power of the legislature to provide that certain offenders be made to suffer certain forms of punishment. *The provision of a mandatory minimum sentence is a clear instance of the exercise of this power by the legislature and the court ought not to usurp this power by an unjustifiably wide reading of an unambiguous provision*. Therefore the expression 'an offence (not being an offence the sentence for which is fixed by law)' *cannot and should not be given the excessively broad meaning of any offence other than one which attracts a single inflexible sentence for which the exact quantum and kind of punishment are expressly provided in the statutory provision concerned*. [emphasis added]

24 The decision in *Juma'at* sharply circumscribed the court's power to grant probation under s 5(1) of the POA. Before this decision, the court's jurisdiction extended to *all* offences except those with an *exact* type and quantum of sentence. As a result of *Juma'at*, the courts no longer had the power to grant probation where offences with mandatory minimum sentences were involved. This restriction of the court's jurisdiction under s 5(1) was particularly pervasive in the light of the 1984 amendments to our Penal Code (Cap 224, 1985 Rev Ed). These amendments imposed mandatory minimum sentences for the offences of robbery, housebreaking and theft, vehicle theft, snatch theft, extortion, rapes and outraging of modesty: see *Singapore Parliamentary Debates, Official Report* (26 July 1984) vol 44 at col 1867.

25 The fear of marginalising the utility of probation as an alternative sentencing option spurred Parliament to insert the proviso to s 5(1) just months after *Juma'at* was decided: see *Singapore Parliamentary Debates, Official Report* (10 November 1993) vol 61 ("*Parliamentary Debates*, vol 61") at cols 931–939. However, whilst Parliament felt the need to mitigate the effect of the ruling in *Juma'at*, it is crucial to note that it nevertheless affirmed the interpretation that the case had placed on the term "sentence … fixed by law". According to the Minister for Community Development (*Parliamentary Debates*, vol 61 at col 931):

> The Chief Justice had ruled [on 30 June 1993] that … *the words "fixed by law" appearing in s 5(1) of the Probation of Offenders Act apply to mandatory minimum sentences*.

Sir, the Chief Justice's decision is correct. In granting probation to an adult offender in cases where the law specifies a mandatory minimum sentence, a Court would be defeating the intention of Parliament when it enacted mandatory minimum penalties for such offences.

[emphasis added]

26 In the light of the decision in *Juma'at* and its subsequent affirmation by Parliament, it is clear that the *main body* of s 5(1) of the POA should now be interpreted as creating a blanket prohibition against probation, not only in respect of offences which impose a *fixed* sentence, but also in respect of offences which prescribe a mandatory minimum sentence. The effect of this prohibition must, however, be read in the light of the proviso to s 5(1), which will now be considered.

The proviso to section 5(1) of the Probation of Offenders Act

27 As stated earlier, whilst Parliament affirmed the interpretation adopted in *Juma'at* ([23] *supra*), it also recognised the need to qualify the overly extensive effects of such an approach (see [25] above). As a result, the proviso to the current s 5(1) of the POA was inserted by way of the Probation of Offenders (Amendment) Act 1993 (Act 37 of 1993). According to the Minister for Community Development (*Parliamentary Debates*, vol 61 ([25] *supra*) at cols 931 and 932):

The Bill seeks to amend the Probation of Offenders Act (Chapter 252) *to provide the Courts with the power to grant probation* … for young offenders who have attained the age of 16 years but have not attained the age of 21 years at the time of their convictions for their offences, *notwithstanding that the offences concerned are punishable with specified minimum or mandatory minimum sentences*.

…

[T]he Probation of Offenders Act, as it now stands, can apply to any offence except for those offences where the sentence is fixed by law. *The proposed amendments are necessary in view of the decision by the Chief Justice on 30th June 1993 that the Courts have no power to grant probation to offenders convicted of an offence where a mandatory minimum sentence is prescribed for that offence*.

[emphasis added]

28 In view of the Minister's statement, it is evident that the proviso qualifies the main body of s 5(1) by *re-extending*, rather than additionally circumscribing, the court's jurisdiction to grant probation (see [18] above). It mitigates the blanket exclusion of offences with sentences "fixed by law" and allows probation to be granted for some of these offences if certain conditions are met. In particular, the proviso allows the court to grant probation for two specific sub-categories of offences with sentences "fixed by law", *ie*, those with "specified minimum" sentences or "mandatory minimum" sentences, provided that the offender in question falls within conditions (a) and (b) therein.

29 At this juncture, I should pause to highlight that whilst the proviso to s 5(1) purportedly *qualified* the effect of the decision in *Juma'at* ([23] *supra*), it in fact implicitly *extended* the definition of "fixed by law" by including an additional category of offences, *ie*, offences with a "specified minimum sentence", within its ambit. The decision in *Juma'at* only addressed the availability of probation for offences with mandatory minimum sentences. No mention was made of this additional category of offences with "specified minimum sentences". Yet, according to the Minister, the proviso was intended to "*provide the Courts with the power* to grant probation … notwithstanding that the

offences in question are punishable with specified minimum … sentences" [emphasis added]: see *Parliamentary Debates*, vol 61 ([25] *supra*) at col 931. This suggested that the courts *did not* previously have the power to grant probation for offences with a "specified minimum sentence", and was an implicit concession that such offences were offences with sentences "fixed by law" that would *otherwise* have been excluded from the jurisdiction under s 5(1).

30 This issue aside, one can nevertheless conclude that s 5(1) of the POA generally allows a court to grant probation *unless* the offence in question has a sentence which is "fixed by law". This blanket prohibition is however subject to the proviso in s 5(1), which *re-includes* a number of offences within the jurisdiction to grant probation. Where the sentence "fixed by law" is either a "specified minimum sentence" or "mandatory minimum sentence", the court can order probation if the offender in question is between 16 to 21 years of age at the time of his conviction and if he has no prior convictions for offences with "specified minimum" or "mandatory minimum" sentences.

Sentences under section 5(a) of the Common Gaming Houses Act

31 In order to ascertain whether the *present scenario* fell within the scope of the court's jurisdiction to grant probation, these requirements of s 5(1) of the POA had be applied to s 5(*a*) of the CGHA, the charging section under which the appellant was convicted. An offender convicted under s 5(*a*) potentially faces two different punishments: (a) a fine ranging between $20,000 and $200,000; and (b) imprisonment for not more than five years. To determine whether offences under s 5(*a*) fell within the prohibition in the main body and/or the exemptions in the proviso to s 5(1) of the POA, the *extent* of the court's discretion to impose each of these punishments under s 5(*a*) first had to be ascertained.

32 In this regard, I was of the view that the prevailing position in the jurisprudence fails to accurately reflect the types of sentence mandated by s 5(*a*). These flaws in the current position become patent when compared against: (a) the express language of s 5(*a*) itself; and (b) the legislative intent behind the provision.

Current sentencing practice on s 5(a) of the CGHA

33 Section 5(*a*) of the CGHA utilises different language to prescribe the sentences of fine and imprisonment. The section first provides that an offender "*shall be liable … to*" a fine of between $20,000 and $200,000, but goes on to state that such an offender "*shall also be punished with*" imprisonment of up to five years. Notwithstanding this disparity, a number of local cases have conflated the legal effect of both limbs and interpreted s 5(*a*) as imposing *both* a mandatory minimum fine and a mandatory term of imprisonment.

34 In *See Choon Chye v PP* [1992] 2 SLR 98 ("*See Choon Chye*") at 99, [3], the court held that "the minimum sentence that could be meted out under s 5(a) is … a fine of $20,000 and one day's imprisonment". By deciding that s 5(*a*) of the CGHA imposed *both* a mandatory fine and a mandatory jail term, the court effectively attached the same meaning to the phrases "shall be liable … to" and "shall … be punished with" in s 5(*a*). The decision did not explain why the court found the concurrent use of these differing phrases to be of no legal significance.

35 The approach in *See Choon Chye* has been adopted in subsequent decisions emanating from the Subordinate Courts. According to the magistrate in *PP v Tang Chong Nai* [2006] SGMC 6, the mandatory fine and imprisonment term under s 5(*a*) reflects Parliament's intention that such offences should be treated seriously: at [7]. The magistrate observed that Singapore courts have consistently taken a harsh stand on the offence of assisting in carrying on a public lottery and went on to

consider the range of sentences that had been imposed in previous cases involving s 5(*a*) of the CGHA: at [7] and [12]–[17]. Notably, in *all* the cases she referred to, the courts imposed *both* a fine of at least $20,000 and a term of imprisonment: see, *eg*, *Phang Tee Ann v PP* (MAC 7589 of 1990); *Tay Khoon Hoo v PP* (MAC 13894 of 1989); *Seah Guek Eng v PP* (MA 323 of 1994/01).

36 In *PP v Dua Thiam Hock* (MAC 6185 of 2000/01) ("*Dua Thiam Hock*"), the magistrate attempted to deviate from this approach by only imposing a term of *imprisonment* on an accused convicted under s 5(*a*) of the CGHA. The magistrate found that a fine was *not* mandatory under s 5(*a*) of the CGHA, save that where a court decided to impose a fine, the minimum quantum was $20,000: at [13]. Since the phrase "shall be liable" contained no mandatory connotation, the court retained its discretion not to impose a fine under s 5(*a*) of the CGHA: at [10] and [11]. Accordingly, as the accused was not in a position to pay any fine, an immediate term of two months' imprisonment was imposed instead: at [9] and [16]. The Prosecution appealed against this sentence, arguing that s 5(*a*) of the CGHA imposed a mandatory minimum fine of $20,000. Notably, this point was *expressly conceded* by defence counsel during the appeal proceedings. The High Court accordingly allowed the Prosecution's appeal and increased the sentence to include a fine of $20,000 in addition to the existing jail term: *PP v Dua Thiam Hock* (MA 250 of 2000/01). Though no written grounds were delivered, in light of the parties' submissions, the High Court's decision was in all likelihood based on the view that s 5(*a*) required the imposition of a mandatory minimum fine of $20,000.

37 The current sentencing practice and jurisprudence therefore suggest that *both* limbs of punishment under s 5(*a*) should be treated as being mandatory. With respect, this position fails to adequately address the disparity between the discordant utilisation of the terms "shall be liable … to" and "shall also be punished with" within the section itself. For the reasons that follow, I am of the view that such an approach to s 5(*a*) is erroneous and that the interpretation applied by the magistrate in *Dua Thiam Hock* ([36] *supra*) was correct.

Interpreting the language of section 5(a) of the Common Gaming Houses Act

38 Whilst s 5(*a*) of the CGHA does indeed prescribe a mandatory term of imprisonment, the imposition of a fine should be treated as *optional*. Instead of imposing a *mandatory* minimum fine as the cases suggest, the specification of a minimum fine in s 5(*a*) does nothing more than to require that *if a fine is in fact imposed*, it must be at least $20,000.

39 This interpretation of s 5(*a*) would give more credence to its plain and ordinary meaning and would also be more consistent with the legislative history behind the provision. The phrases "shall be liable … to" and "shall … be punished with" represent the focal point of any attempt to derive the plain meaning of s 5(*a*) of the CGHA. There is an established and palpable distinction between the connotations arising from each of these expressions. It would do violence to the plain meaning of s 5(a) to *equate* the legal effect of each of these phrases as the cases thus far have done.

40 As a general starting point, the principles of statutory interpretation clearly ascribe opposing meanings to the expressions "shall be liable to" and "shall be punished with" in penal provisions. In *Philip Lau Chee Heng v PP* [1988] 3 MLJ 107, counsel for the accused attempted to argue that these two phrases had the same legal effect. Chong Siew Fai J unequivocally rejected this submission and held (at 109) that there was a "*clear distinction* between the phrases 'shall be liable to' and 'shall be punished with'" [emphasis added]. A precise delineation of the connotations attached to each phrase is therefore essential to reaching an accurate construction of s 5(*a*) of the CGHA.

41 It is trite law that generally, the expressions "shall be liable to" and "shall be punished with" respectively prescribe discretionary and mandatory sentences. According to Yong CJ in *PP v Lee Soon*

Lee Vincent [1998] 3 SLR 552 ("*Vincent Lee*") at [14], "prima facie, the phrase 'shall be liable' (as opposed to 'shall be punished') contain[s] no obligation or mandatory connotation". Yong CJ went on to observe (at [15]) that:

> Indeed, if one looked at the Penal Code, it would be apparent that the draftsman had been very careful in *using the phrase 'shall be punished' to prescribe a mandatory penalty, and using 'shall be liable' only when the penalty was dependant on the court's discretion*. [emphasis added]

42 In a similar vein, in *PP v Man Bin Ismail* [1939] MLJ 207, Aitken J had to consider whether a penal provision, which provided that a person convicted "shall be *liable* to imprisonment for six months", meant that the court *had* to pass some sentence of imprisonment and was precluded from allowing probation. Aitken J rejected any such suggestion, and held (at 208) that:

> *To my mind [the words "shall be liable to"] give the Court an absolute discretion* as to whether it shall award a sentence of imprisonment or deal with the accused under and in accordance with the probationary provisions of s 294 of the Criminal Procedure Code. *If the legislature had intended that all persons convicted of an offence against this [provision] should be sent to prison, whatever the circumstances may be, it would have used the expression "shall be punished with imprisonment"*, which is to be found so frequently in our Penal Code. [emphasis added]

43 Applying this approach to the language of s 5(*a*), the section, by employing the phrase "shall … be punished with", clearly imposes a *mandatory* term of imprisonment for all persons found guilty of assisting in the conduct of a public lottery. Since there is no mandatory minimum duration of imprisonment specified in s 5(*a*), this compulsory incarceration can last from anywhere between one day to five years. In contrast, the phrase "shall be liable … to" suggests that the sentence of fine prescribed by s 5(*a*) is *prima facie* discretionary (see *Vincent Lee* ([41] *supra*) at [14]), rather than mandatory, as cases like *See Choon Chye* ([34] *supra*) suggest. As was aptly explained by Brown J in *Ng Chwee Puan v Regina* [1953] MLJ 86:

> But the word "liable" contains no obligatory or mandatory connotation. Sitting in this Court, with a table fan blowing directly on to me, I am "liable" to catch a cold. *But it does not follow that I shall*. [emphasis added]

44 The permissive connotation generally attributed to the expression "shall be liable to" is even more obviously applicable in the context of s 5(*a*), given its *concurrent* use with the phrase "shall … be punished with". The usage of these divergent terms within the *same* provision clearly necessitates that different meanings be attributed to each of them. In the words of the court in *Doree Industries (M) Sdn Bhd v Sri Ram & Co* [2001] 6 MLJ 532:

> [I]t is a rule of statutory interpretation that the Legislature does not waste its words or say anything in vain … The presumption is always against superfluity in a statute …
>
> *Every part in a statute should be given as far as possible its full meaning and effect* … No word is superfluous, redundant or surplus.
>
> [emphasis added]

45 This approach to the concurrent use of these disparate phrases within the same provision is supported by existing case law. In *PP v Mahat bin Salim* [2005] 3 SLR 104 ("*Mahat*"), the court had to consider the type of punishment prescribed by ss 356, 380 and 394 of the Penal Code. Sections 356

and 380 respectively provided that persons found in violation of the section "*shall be punished with* imprisonment … and *shall also be liable to*" caning (s 356) and fine (s 380). In contrast, s 394 provided that an offender convicted under the section "*shall be punished with* imprisonment … and *shall also be punished with* caning". According to the court, the phrase "shall also be liable to", as used in ss 356 and 380, did not bear a mandatory connotation. On the other hand, the phrase "shall be punished with" used in these *same* sections prescribed a mandatory sentence of imprisonment: at [29]. Similarly, since both limbs of s 394 had used the phrase "shall … be punished with", the section rendered *both* imprisonment and caning mandatory: at [30].

46 In *PP v Nurashikin binte Ahmad Borhan* [2003] 1 SLR 52 ("*Nurashikin*"), the court had to consider the effect of s 380 of the Penal Code, which stipulated that an offender convicted of the offence "*shall be punished with* imprisonment for a term which may extend to 7 years, and *shall also be liable to* fine". According to the court, the phrase "shall be liable to" (as opposed to "shall be punished with") contained no obligatory or mandatory connotation. Section 380 therefore prescribed a *mandatory* term of imprisonment and a *discretionary* fine: at [29].

47 The reasoning in *Mahat* ([45] *supra*) and *Nurashikin* ([46] *supra*) clearly dictates that s 5(*a*) of the CGHA should be read as imposing a *mandatory* jail term and *discretionary* fine. Admittedly, in those cases, the provisions in question employed the phrases "shall be punished with" and "shall be liable to" in the opposite order from s 5(*a*). However, the sequence in which the phrases appeared is a distinction without a difference. As the court pointed out in *Mahat* (at [29]), "there ought to be no distinction between the phrase 'shall be liable' and 'shall also be liable' by virtue of the fact that *the word 'liable' carries no mandatory effect regardless of the use of the word 'also' in [these sections]*" [emphasis added]. Similarly, it is equally the case that the addition or omission of the word "also" from the phrase "shall be punished with" is of no legal significance. It is the *concurrent* appearance of both these phrases within the same provision that is important, not the *order* in which they appear.

48 The discussion thus far leads inexorably to the conclusion that s 5(*a*) of the CGHA only requires the mandatory imposition of a term of imprisonment and not a fine. However, an additional issue that needs to be addressed is whether the inclusion of a *specified minimum quantum* of fine as part of s 5(*a*) detracts from the ordinary meaning of the phrase "shall be liable to". As mentioned earlier, s 5(*a*) states, *inter alia*, that an offender convicted under the section "shall be liable … to a fine of *not less than $20,000* and not more than $200,000" (emphasis added). In all the cases considered thus far, the penal provisions which contained the phrase "shall be liable to" did not expressly stipulate any *minimum* quantum for the punishment in question. One might therefore argue that the inclusion of a specified range of fines in s 5(*a*) overrides the permissive meaning that would otherwise be attributed to the phrase "shall be liable to", and indicates that a fine of at least $20,000 *must* be imposed in all cases.

49 In *PP v Hew Yew* [1972] 1 MLJ 164 ("*Hew Yew*"), the court was faced with a similar problem. In that case, the court had to consider the effect of a provision which stipulated that a person found guilty of the relevant offence "*shall be liable* to imprisonment for a term *not exceeding five years and not less than two years*" [emphasis added]. The court allowed the Prosecution's appeal against sentence, and held that the trial judge had erred in sentencing the accused to only a fine. According to the court, the provision in question conferred the court with an absolute discretion to impose the maximum sentence of five years' imprisonment or any lesser sentence, *provided that the sentence was not less than two years' imprisonment*. In effect, the provision was therefore interpreted as imposing a mandatory minimum term of two years' imprisonment despite the use of the phrase "shall be liable to".

50 This aspect of the decision in *Hew Yew* may, at first blush, appear to support the conclusion

that s 5(*a*) of the CGHA imposes a mandatory minimum fine of $20,000. However, the interpretation placed on the phrase "shall be liable to" in *Hew Yew* can be distinguished on the basis that the provision in that case did not impose any sentence other than the imprisonment term already referred to. That being the case, the court was, in a sense, *compelled* to place a mandatory construction on the phrase so as to avoid the absurd conclusion that the provision allowed the court not to impose *any* punishment on an offender at all: see also *Chng Gim Huat v PP* [2000] 3 SLR 262 at [101]. This problem evidently does not arise when one turns to s 5(*a*) of the CGHA. As already discussed, the other limb of s 5(*a*) imposes a mandatory term of imprisonment for all offenders convicted under the section. The concern that no punishment may be imposed at all is therefore illusory: see also *Mahat* ([45] *supra*) at [29].

51 With this consideration in mind, the decision in *Hew Yew* should therefore be confined to its own unique facts. It should *not* be treated as support for the more extensive proposition that all provisions with a specified minimum quantum will be taken to impose a mandatory minimum sentence despite the use of the phrase "shall be liable to".

52 This conclusion is supported by other cases, which have decided that the stipulation of a minimum quantum *does not* negate the non-obligatory effect of the words "shall be liable to". In *Abu Seman v PP* [1982] 2 MLJ 338 ("*Abu Seman*"), the accused was convicted under s 11(1)(b) of the Malaysian Election Offences Act. Section 11(1)(b) provided that a convicted person "*shall be liable* to imprisonment for 12 months and *to a fine of not less than $250 and not exceeding $1,000*" [emphasis added]. Despite the express reference to a minimum quantum of fine in s 11(1)(b), the court held (at 342) that the words "shall be liable to" gave the trial court "*an absolute discretion* … as to the form and the extent of the sentence to be imposed … be it imprisonment or fine or both" [emphasis added].

53 In *Vincent Lee* ([41] *supra*), the court was again faced with a similarly phrased provision. Section 68(1) of the Road Traffic Act (Cap 276, 1997 Rev Ed) provided, *inter alia*, that a repeat offender under the section "*shall be liable* on conviction … *to a fine of not less than $1,000 and not more than $5,000* and to imprisonment for a term not exceeding 6 months" [emphasis added]. The court held that "reading s 68(1) *on its own*" [emphasis in original], it would not have thought that the section made it mandatory to impose *both* a fine and an imprisonment term: at [20]. A plain reading of the section suggested that a repeat offender could be sentenced to *either* a fine *or* a term of imprisonment, or *both* a fine *and* a term of imprisonment: at [26]. Though the court was ultimately convinced to construe s 68(1) as imposing *both* a mandatory fine and a mandatory term of imprisonment, this conclusion was a result of the unique legislative intention behind the provision: at [38]. To that extent, the final result in *Vincent Lee* does not detract from its persuasiveness as authority for the proposition that the stipulation of an express minimum quantum *does not* override the *discretionary* effect of the phrase "shall be liable to". In fact, it is of interest to note that the court in *Vincent Lee* had the following advice on legislative drafting (at [27]):

> *[B]earing in mind the general usage of the words 'shall be liable' and taking into account their usual effect, I would have thought that to avoid confusion, future provisions might be worded differently if a mandatory effect was so desired*. The court does not always have the benefit of the full legislative history of a provision. It must frequently simply rely on the wording of relevant sections as they appear in the statutes for the regular disposal of its cases, but I shall leave the matter entirely in the hands of the legislative draftsmen. [emphasis added]

54 The cases of *Abu Seman* ([52] *supra*) and *Vincent Lee* ([41] *supra*) are convincing authorities that the stipulation of a $20,000 minimum fine in s 5(*a*) is not itself a sufficient ground to detract from the meaning that would otherwise be accorded to the phrase "shall be liable to". These

cases, together with the other authorities considered earlier, clearly show that a plain reading of s 5(*a*) would lead one to the conclusion that the section only renders the imposition of *imprisonment* mandatory and leaves the decision of whether to impose a fine to the court's discretion.

Parliament's intent behind section 5(a) of the Common Gaming Houses Act

55 Despite this *prima facie* conclusion, the decision in *Vincent Lee* ([41] *supra*) illustrates that the legislative intent behind a provision may, in certain cases, qualify its plain meaning. Translated to the present facts, the issue would therefore be whether Parliament intended, in prescribing the various penalties enshrined in s 5(*a*) of the CGHA, to make *both* the sentences of imprisonment and fine mandatory.

5 6 Section 5(*a*) of the CGHA, in its present form, is a hybrid of two tranches of legislative amendments in 1971 and 1986 respectively. In this regard, itis crucial to view both series of amendments *cumulatively*. It is only when the *sequential developments* of s 5(*a*) are considered that the true extent of Parliament's intent can be appreciated.

57 In order to appreciate the extent of the court's discretion to impose a fine under s 5(*a*) of the CGHA, the context behind the original inclusion of this provision is highly pertinent. The relevant part of s 5(*a*) which provides for the imposition of a fine, *ie*, the part prescribing that an offender "shall be liable … to a fine of not less than $20,000 and not more than $200,000", was first added to the CGHA in materially the same form (except for the quantum of the minimum and maximum fine) by way of the Common Gaming Houses (Amendment) Act 1971 (Act 25 of 1971).

58 Prior to the 1971 amendments, the then s 4(1)(*c*) of the 1970 Common Gaming Houses Act (Cap 96, 1970 Rev Ed) ("1970 CGHA") provided that a person who assisted in the carrying on of a public lottery "*shall be liable* on conviction to a fine not exceeding $6,000 *or* to imprisonment for a term not exceeding 3 years *or to both such fine and imprisonment*" [emphasis added]. The 1971 amendments inserted a new s 4A into the 1970 CGHA. The new s 4A(*a*) provided, *inter alia*, that a person who assisted in the carrying on of a public lottery "*shall be liable on conviction to a fine of not less than two thousand dollars but not exceeding twenty thousand dollars or* to imprisonment for a term not exceeding three years *or to both such fine and imprisonment*" [emphasis added].

59 The language of *both* the former s 4(1)(*c*) and the new s 4A(*a*) of the 1970 CGHA made it patently clear that an offender convicted of assisting in the conduct of a public lottery *was not liable to any mandatory sentence*. Under both these sections, it was entirely up to the court's discretion whether to impose a fine and/or an imprisonment term. This strongly suggests that *even though* the 1971 amendments included a specified range of fines in the new s 4A(*a*), this was solely directed at ensuring that *when and if* the courts decided to impose a fine, the fine would have sufficient deterrent effect. There was clearly no intention to create a new mandatory minimum fine for the offence of assisting in the conduct of a public lottery.

60 According to the Minister of Home Affairs (*Singapore Parliamentary Debates, Official Report* (2 December 1971) vol 31 at cols 444 and 445):

> As the law stands at present, a person found guilty of assisting in carrying on a public lottery and all other related offences *shall be liable to fine not exceeding $6,000 or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment*. It is felt that this punishment is grossly inadequate to assist the police in their efforts to suppress the operation of illegal lotteries in Singapore …

… Experience has shown that the fines imposed on offenders have varied substantially from court to court, and in some instances they have been so low as to be unrealistic. These variations in fines have not in any way contributed towards eradication and suppression of these lotteries. At present the maximum fine of $6,000 is "chicken feed" to the big-time promoters and hardly serves as a deterrent.

It is a well-known fact that invariably promoters pay the fines imposed on the runners and collectors, and it is very rare that anyone is imprisoned for non-payment of a fine. *With the raising of the minimum fine to $2,000 and the maximum fine to $20,000, the promoters will find it difficult to sustain payment of fines, as the running of these lotteries would become less lucrative*.

…

… During the years 1966 to 1970, the fines per person [convicted of running "characters lottery"] ranged from only $295 to $685. For the same period, the fines imposed on people caught in running "Chap-Ji-Kee Lottery" ranged from $291 to $686. These fines were very low indeed … Taking the 1970 convictions in respect of the "Characters Lottery", if a minimum fine of $2,000 had been imposed, the fines would have totalled nearly half a million dollars as against the figure of about $147,000. This would have adversely affected the profitability of running these lotteries.

At present the law does not provide for a minimum fine, and the discretion to impose such a "minimum fine" is left to the discretion of the Magistrate who, more often than not, is left in a quandary. The fines are normally based on the value of documents seized. This is an unsatisfactory method as, in some instances, big-time operators have got away lightly as the value of documents seized has been negligible.

[emphasis added]

61 As the Minister stated, the new s 4A(*a*) of the 1970 CGHA was intended to rectify the fluctuating level of fines that were imposed under the former s 4(1)(*c*). The Minister's statement was directed entirely towards the issue of *quantum* and made no reference to the related but distinct question of *the frequency* with which fines were being imposed in isolation or in conjunction with imprisonment terms. This fact, coupled with the unequivocal phrasing of s 4A(*a*), makes it clear that Parliament did not intend the 1971 amendments to impinge on the courts' erstwhile discretion to make the preliminary decision of *whether* to impose a fine and/or a term of imprisonment.

62 Section 4A(*a*) of the 1970 CGHA was subsequently amended in 1986 by the Common Gaming Houses (Amendment) Act 1986 (Act 9 of 1986). As a result of these amendments, s 4A(*a*) became identical to the present s 5(*a*). Two main changes were made by the 1986 amendments. First, the specified range of fines was changed from a lower limit of $2,000 to $20,000 and from an upper limit of $20,000 to $200,000. Second, the words "or to imprisonment for a term not exceeding three years or to both such fine and imprisonment" were deleted, and the phrase "and shall also be punished with imprisonment for a term not exceeding 5 years" was inserted.

63 Two observations arise from these amendments. First, the deletion of the words "or to imprisonment … or to both such fine and imprisonment", and the insertion of a new phrase that an offender "shall … be punished with imprisonment", cumulatively indicate that the 1986 amendments created a *mandatory term of imprisonment*. Second, the portion of s 4A(*a*) relating to the imposition of *fines* remained materially unchanged. The only amendments made regarding the provision of fines

were the changes in the quantum of the upper and lower stipulated limits. In the light of the insertion of the new phrase "shall … be punished with" to create a new mandatory term of imprisonment, Parliament's decision to retain the old phrase "shall be liable … to" in the portion dealing with fines suggests that it intended this limb of punishment to *remain discretionary*.

64 These two observations are supported by the Explanatory Statement to the Common Gaming Houses (Amendment) Bill 1985 (Bill 16 of 1985). According to the Explanatory Statement, the effect of the amendments made to s 4A(*a*) were as follows:

> Clause 3 [which amended s 4A(*a*)] enhances the penalty for offences in connection with assisting in the carrying on of a public lottery to *a fine of not less than $20,000 and not more than $200,000* and to *mandatory imprisonment* for a term not exceeding 5 years. [emphasis added]

Notably, the Explanatory Statement only referred to the imposition of imprisonment, *and not a fine*, as being mandatory.

65 A perusal of the relevant Parliamentary debates does not give rise to any indication to the contrary. Only passing reference was made in the relevant debates to the amendments to s 4A(*a*). According to the Minister for Home Affairs (*Singapore Parliamentary Debates, Official Report* (10 January 1986) vol 46 at col 760):

> [As] a consequence of the amendments to the Betting Act, amendments to the Common Gaming Houses Act are also necessary to bring the penalties into line … The penalties under the Act are also more than 25 years old and are totally inadequate to serve as a deterrent.
>
> …
>
> The main culprits in illegal gambling are those who assist in the carrying on of an illegal public lottery or allow any public place to be used for gambling or promote gaming in public. *Clauses 3 [which amended s 4A(*a*)] and 6 of the Bill enhance the penalties particularly for these offences*.
>
> [emphasis added]

66 As the Minister explained in his statement, the 1986 amendments to the CGHA were part of a "package" together with concurrent amendments to the Betting Act (Cap 21, 1985 Rev Ed) and the Road Vehicles (Special Powers) Act (Cap 277, 1970 Ed). The amendments made to the penalties for illegal gambling operators in the Betting Act paralleled the amendments made to the CGHA. The Minister for Home Affairs made the following remarks in relation to the amendments in the Betting Act (*Singapore Parliamentary Debates, Official Report* (10 January 1986) vol 46 at cols 725 and 726):

> There are basically three inadequacies in the law. One is that the penalties which are prescribed in the legislation have not been revised for more than a quarter century. And, therefore, this has made it not a deterrent and the operators of the illegal mini-turf clubs therefore operate without scant regard for the law …
>
> …
>
> If I may now turn to some of the amendments. First, with regard to the penalties. The proposed amendments are aimed primarily at the gambling operators. To deter the bookmakers and their agents, the existing penalties for various categories of gambling offences are enhanced, *including the imposition of mandatory prison sentences* for those concerned with the management or

business of a common betting house or a betting information centre.

…

The main thrust of these amendments is against the operators of these mini-turf clubs. Enhanced punishments will be introduced for these offences. *The maximum fines will be increased significantly and there will also be minimum fines to ensure that the sentences are adequate as a deterrent*. For instance, offences like bookmaking, running a common betting house and operating a betting information centre will carry a fine ranging from $20,000 to $200,000 and mandatory imprisonment which may extend to five years. *[These] illegal gambling operators will now face these minimum fines as well as mandatory imprisonment* …

[emphasis added]

67 As is apparent from the passage above, the new punishments for the offences of bookmaking, running a common betting house and operating a betting information centre under the Betting Act were *identical* to those proposed for s 4A(*a*) of the CGHA. The Minister's reference to offenders having to face "*minimum* fines" may suggest that Parliament intended to make the imposition of a fine compulsory. However, any such suggestion is rebutted by various indications to the contrary.

68 To begin with, it should be highlighted that throughout his statement, the Minister *only* referred to imprisonment as being "mandatory". Further, when summarising the amendments in the earlier part of his speech, the Minister only referred to the "mandatory prison sentences" that would be imposed as a result. No reference was made to the effect that the amendments would have on the imposition of fines. This omission indicates that there was no intention for mandatory minimum fines to result from the amendments to the Betting Act and, by analogy, from the amendments to the CGHA. As in the case of the CGHA, the earlier provisions of the Betting Act allowed the court to impose sentences of fine and imprisonment *both alternatively and cumulatively*. Accordingly, *both* mandatory fines and mandatory jail terms would have been novel to the Betting Act. That being the case, if it had indeed been Parliament's intention to make it mandatory for the court to impose *both* a fine and imprisonment under the CGHA, it is difficult to understand why *only* the mandatory nature of imprisonment terms was highlighted.

69 In addition, the Parliamentary debates on the 1971 amendments to the CGHA militate against any mandatory connotation that may otherwise arise from the use of the term "minimum fine" in the 1986 Parliamentary debates ([66] *supra*). In the excerpt of the 1971 debates extracted above ([60] *supra*), the Minister *also* used the term "minimum fine" to refer to the minimum quantum of fines that were stipulated in the new s 4A(*a*) of the 1970 CGHA. Yet, as already explained ([59] to [61] *supra*), the imposition of a fine under this new s 4A(*a*) was clearly *discretionary*. Under s 4A(*a*), the court had an unfettered discretion to choose whether or not to impose a sentence of fine. It would only have to adhere to the minimum fine stipulated *if* it made the logically prior decision to impose a sentence of fine. The term "minimum fine" was therefore used in the 1971 debates *without any mandatory or obligatory connotation*. There is no reason to believe that the term was used any differently in the context of the subsequent 1986 debates.

70 To my mind, the legislative history behind s 5(*a*) of the CGHA therefore does not contradict the provisional conclusion reached earlier that the section does not impose a *mandatory minimum fine*. Though the Parliamentary debates are not entirely conclusive, the manner in which the CGHA was amended in 1986 strongly suggests that Parliament intended to *continue leaving* the imposition of a fine to the court's discretion, subject to the proviso that any fine imposed had to fall within the

limits stipulated.

71 For these reasons, s 5(*a*) of the CGHA therefore imposes a *mandatory* sentence of imprisonment of up to five years and an *optional* fine that must range between $20,000 and $200,000. This construction is supported by Prof Tan Yock Lin in his treatise, *Criminal Procedure* (LexisNexis, 2006). According to Prof Tan (at ch XVIII para 405–450 (December 2005 issue)):

> [T]here are some off-guarded moments, which should not be taken seriously. In one case [*See Choon Chye*], section 5(a) of the Common Gaming Houses Act had to be applied…*The fine was clearly discretionary although the imprisonment was mandatory*. Yet the court observed that, 'The minimum sentence that could be meted out under s 5(a) is therefore, a fine of $20,000 and one day's imprisonment.' That suggests *incorrectly* that the offender must be fined. [emphasis added]

Section 5(1) of the POA as applied to section 5(a) of the CGHA

72 Having ascertained the nature and scope of punishment prescribed by s 5(*a*) of the CGHA, the final question that remains to be addressed is whether these forms of punishment suffice to bring s 5(*a*) within the meaning of an offence which prescribes either a "specified minimum" or "mandatory minimum" sentence under s 5(1) of the POA. If this question elicits an affirmative response, then this court's jurisdiction to grant the appellant a probation order would depend on whether she fell within conditions (a) and (b) of the proviso to s 5(1) of the POA. On the other hand, if the sentences in s 5(*a*) of the CGHA were neither "specified minimum" nor "mandatory minimum" sentences, one would then have to proceed to ask the additional question of whether these sentences were nevertheless other kinds of sentences "fixed by law" such that the main body of s 5(1) of the POA excluded them from the court's jurisdiction to grant probation.

The existence of a "mandatory minimum" sentence

73 Based on the construction of s 5(*a*) of the CGHA advocated earlier, it is evident that the section does not prescribe a mandatory minimum sentence of *fine*. The crux of the issue is therefore whether the mandatory sentence of imprisonment of up to five years is a "mandatory minimum sentence" under s 5(1) of the POA.

74 At first sight, it may appear patently obvious that a provision which prescribes a mandatory jail term without *expressly* stipulating a minimum duration cannot be considered a "mandatory minimum sentence". However, the received understanding of a "mandatory minimum sentence" has been somewhat obfuscated by cases such as *See Choon Chye* ([34] *supra*), which have referred to s 5(*a*) of the CGHA as imposing a "(mandatory) minimum sentence … of one day's imprisonment": *See Choon Chye* at 99, [3]. Prof Tan Yock Lin criticises the perceived distinction between offences (such as s 5(*a*) of the CGHA) which only prescribe a mandatory *kind* of sentence, be it imprisonment, caning or a fine, and those which prescribe *both* a mandatory *kind* of sentence and a minimum *quantum* for the kind of sentence in question. In Prof Tan's view, such a distinction is untenable (see *Criminal Procedure* ([71] *supra*) at ch XVIII para 3005–3050 (December 2003 issue)):

> With respect, the argument [in *Juma'at*] proves too much; for when Parliament makes the punishment mandatory although it does not fix minimum levels, *it could be said that Parliament has also fixed the minimum level, the smallest quantum being the minimum level Parliament has fixed*. So if the reasoning [in *Juma'at*] is correct, *the decision that probation is precluded must affect every case in which Parliament has made a penalty mandatory*, although leaving to the courts a discretion as to the quantum. [emphasis added]

75 Admittedly, the difference between offences with only a mandatory kind of sentence and those with *both* a mandatory kind of sentence and a stipulated minimum quantum is, in truth, largely one of degree. In both these situations, Parliament has shown *some* intention to impose a compulsory form of punishment for the offence in question. Nevertheless, there is in fact a credible distinction between these two categories of offences. The *express* provision of a mandatory minimum quantum is significant because the specificity with which Parliament has acted is clear evidence of its intention to circumscribe the court's sentencing discretion. By attaching an *actual numerical value* to the lowest level of punishment deemed acceptable, Parliament has clearly addressed its mind to the issue and decided that nothing less than the stated quantum will suffice. It is only in these circumstances that the court's jurisdiction to grant probation should be circumscribed. As stated in *Masran bin Mansor v PP* [1992] 1 MLJ 307 ("*Masran*"), "[i]f it is the intention to withhold from the court the power to resort to probation in respect of any offence or class of offences then … *that intention must be made manifest in the legislation*" [emphasis added].

76 This distinction, which is based on whether the offence-creating provision has *expressly* stipulated a minimum quantum for the mandatory sentence, is supported by *dicta* from *Juma'at* ([23] *supra*). In that case, the court distinguished the offence considered in *Goh Boon Kwan* ([22] *supra*) because the relevant offence in *Juma'at* was "an offence the sentence for which [was] *fixed by law to be a minimum of 18 months*" [emphasis added]: at 349, [42]. In contrast, the relevant provision in *Goh Boon Kwan* only went so far as to prescribe that an offender "shall be punished with imprisonment for a term which may extend to 7 years". According to the court, the "vital element [which was characteristic of the offence in *Juma'at* was] the *clear statutory prohibition* on the court from giving sentences of imprisonment of less than *the minimum period expressly stated*" [emphasis added]: *Juma'at* ([23] *supra*) at 349, [42].

77 A similar approach was adopted more recently by the court in *Goh Lee Yin v PP* [2006] 1 SLR 530 ("*Goh Lee Yin*"). In that case, the court had to determine the availability of probation for an offender convicted under s 380 of the Penal Code. According to s 380, an offender "*shall be punished* with imprisonment for a term which may extend to 7 years, and *shall also be liable* to fine" [emphasis added]. Previous cases have recognised that a sentence of imprisonment under s 380 is *mandatory*, though the imposition of a fine is discretionary: see, *eg*, *Nurashikin* ([46] *supra*) at [29]. Despite this, the court in *Goh Lee Yin* held that (at [26]) the appellant was "*clearly not ineligible* for probation under s 5(1) of the POA" [emphasis added]. According to the court, the appellant did not fall within the proviso to s 5(1) since there was *no minimum sentence* prescribed by s 380 of the Penal Code: at [26]. This decision clearly suggests that the *express* stipulation of a minimum sentence is a crucial determinant of whether an offence prescribes a "mandatory minimum sentence".

78 It follows from this that the lack of any *express provision* of a minimum duration of imprisonment brings the sentence of imprisonment prescribed by s 5(*a*) of the CGHA *outside* the realm of "mandatory minimum sentence[s]". Though s 5(*a*) of the CGHA makes it compulsory for a sentence of imprisonment to be imposed, Parliament has not seen it fit to additionally circumscribe the court's sentencing discretion by prohibiting sentences of imprisonment which fall below a particular threshold. Accordingly, *neither* of the sentences prescribed by s 5(*a*) of the CGHA are "mandatory minimum sentence[s]" under s 5(1) of the POA.

The existence of a "specified minimum sentence"

79 As explained earlier (see [27] above), the term "specified minimum sentence" first appeared in the 1993 amendments to the POA. However, there was no discussion of this novel term during the Parliamentary debates on the amendments. In addition, it appears that no reported case has, as yet,

considered the meaning of this term.

80 Despite this, the meaning of the term "specified minimum sentence" is fairly evident when considered in its proper context. Generally speaking, there are two key variables that may affect a court's sentencing discretion: (a) the *type* of sentence, *ie*, whether to impose imprisonment, caning, and/or a fine; and (b) the *quantum* of that sentence, *eg*, the duration of imprisonment or number of strokes of the cane. As explained earlier (see [75] to [78] above), a "mandatory minimum sentence" makes it compulsory for the court to impose a particular type of sentence *and* additionally requires the court to ensure that the quantum of that sentence complies with the minimum level which Parliament has expressly stipulated. In this context, it is only logical that the term "*specified* minimum sentence", as used in contradistinction to the term "*mandatory* minimum sentence", refers to situations where Parliament has expressly prescribed a minimum quantum for a particular type of sentence *but has not made the imposition of this minimum sentence mandatory*. This would arise in offences where the court is given the discretion to decide whether to impose a particular type of sentence but is required to comply with a stipulated minimum quantum *if it ultimately decides to impose a sentence of that type*. Such sentences are described as being "specified", rather than "mandatory", minimum sentences because the court can avoid having to comply with the minimum quantum simply by deciding not to impose the particular type of sentence (be it imprisonment, caning or fine) to which the minimum quantum applies.

81 A classic example of a "specified minimum sentence" would be the former s 4A(*a*) of the 1970 CGHA. To recap, s 4A(*a*) provided that a person convicted of assisting in the conduct of a public lottery "shall be liable … *to a fine of not less than two thousand dollars but not exceeding twenty thousand dollars* or to imprisonment for a term not exceeding three years or to both such fine and imprisonment" [emphasis added]. Even though Parliament had expressly specified the minimum amount of fine that should be imposed, *ie*, $2,000, this $2,000 minimum fine was not mandatory because the court retained the discretion to impose *only* a sentence of imprisonment in appropriate cases.

82 Given this construction of the term "specified minimum sentence" in s 5(1) of the POA, one is led to the inexorable conclusion that s 5(*a*) of the CGHA does indeed prescribe a "specified minimum sentence" of fine. As discussed earlier (see [70] and [71] above), the stipulated minimum fine of $20,000 does not have to be imposed on *all* offenders convicted under s 5(*a*). The court has the discretion to decide *whether* to impose a fine and only needs to comply with the $20,000 minimum *if* it decides to impose a sentence of fine.

83 This conclusion is supported by the Explanatory Statement to the Probation of Offenders (Amendment) Bill 1993 (Bill 25 of 1993). As stated earlier, these were the amendments which inserted the proviso to s 5(1) of the POA. According to the Explanatory Statement:

> This Bill seeks to amend the Probation of Offenders Act (Cap. 252) to preclude a court from making a probation order or an order for absolute or conditional discharge where a person is convicted of *an offence for which there is a specified minimum sentence (e.g. section 4 of the Betting Act (Cap. 21))* or mandatory minimum sentence (e.g. section 384 of the Penal Code (Cap. 224)) of imprisonment or fine or caning prescribed by law unless the person is a first offender and is between the age of 16 and 21 years at the time of his conviction. [emphasis added]

84 According to s 4 of the Betting Act, any person convicted of an offence under that section "*shall be liable on conviction to a fine of not less than $10,000 and not more than $100,000* and shall also be punished with imprisonment for a term not exceeding 5 years" [emphasis added]. This section is, in all material respects, identical to s 5(*a*) of the CGHA. Based on the Explanatory Statement ([83] *supra*), it is therefore clear that Parliament intended to include offences such as s 5(*a*) of the CGHA

within the expression "specified minimum sentence" as used in s 5(1) of the POA.

85 In the light of the foregoing, the offence for which the appellant was convicted therefore had a "specified minimum sentence" and accordingly fell within the proviso to s 5(1) of the POA. Since the appellant was above the age of 21 at the time of her conviction, she therefore failed to satisfy condition (a) of the proviso. The magistrate was therefore eminently justified in refusing to grant probation, because he did not have the jurisdiction to grant the appellant probation in the first place.

The appropriateness of granting probation

86 Assuming that the jurisdiction to grant probation existed, I would, in any event, have affirmed the magistrate's decision to refuse probation. According to the court in *PP v Muhammad Nuzaiham bin Kamal Luddin* [2000] 1 SLR 34 (at [16]), "[i]n deciding whether or not probation is the appropriate sentence in each case, the court … has to take into account all the circumstances of the case, *including the nature of the offence and the character of the offender*" [emphasis added]. In the present case, these considerations variously indicated that the appellant was an unsuitable candidate for probation.

87 In his written submissions, counsel for the appellant relied on *Goh Lee Yin* ([77] *supra*) for the proposition that an offender's age should not be *determinative* of the suitability of a probation order. Whilst offenders over the age of 21 should not *ipso facto* be denied probation, it is nevertheless trite law that the appropriate means of rehabilitating an offender may vary across different age groups. The court in *Goh Lee Yin* (at [28]) itself recognised that "the age of an offender is often indicative of the effectiveness of probation in bringing about rehabilitation". Whilst the court may exceptionally be persuaded to allow probation in cases involving older offenders, the archetype of the appropriate candidate for probation remains the young "amateur" offender.

88 In the present case, it would clearly be inappropriate to liken the *34-year-old* appellant, who was herself a mother of one, to an impressionable youth who had committed an offence either out of impulse or simply because of his inexperience and because he "[didn't] know any better": *PP v Mok Ping Wuen Maurice* [1999] 1 SLR 138 at [21]. The appellant was clearly aware of the consequences of her actions when she decided to assist in the public lottery. By the appellant's own admission, she had been involved in this illegal set-up for a period of *four months* before the date of the raid. This duration would be considered fairly significant by any reasonable standard. It was therefore appropriate that the law express its disapprobation of her conduct through a punishment more severe than a probation order. In the words of the court in *Fay v PP* [1994] 2 SLR 154 (at 159, [17]), whilst "the administration of justice should be tempered with a keen regard for the needs of the individual as far as the ambit of our laws allows … our judiciary must remain conscious of its responsibility to safeguard the interests of the law-abiding general public and *to uniformly apply the law to all those who violate it*" [emphasis added].

89 Whilst I had every sympathy for the appellant's medical condition, one had, at the same time, to bear in mind that her ill health was not the cause of her subsequent commission of the offence. This factor alone sufficed to distinguish cases such as *Goh Lee Yin*, where the accused person's incidents of shoplifting were committed as a *direct* result of her affliction with kleptomania, an *impulse control* disorder. In contrast to *Goh Lee Yin*, the appellant's depression in the present case was more peripherally relevant since it only had the limited effect of enhancing her *vulnerability* to succumb to the temptation of assisting in the public lottery.

90 These factors collectively indicated that an order of probation would not be appropriate in the circumstances. Hence, *even if* the jurisdiction to grant probation had existed, I would not have

been persuaded to exercise my discretion to make such an order.

The quantum of fine and duration of imprisonment

91 Having determined that probation was not a suitable option, I went on to consider whether the term of six months' imprisonment and fine of $200,000 was manifestly excessive in the circumstances. As stated earlier (see [71] above), s 5(*a*) of the CGHA mandates a term of imprisonment, but leaves the imposition of a fine to the court's discretion. To avoid any confusion, I emphasise that this interpretation of s 5(*a*) should *not* be taken as an exhortation for future courts to depart from the existing sentencing practice of imposing *both* a fine and a prison term, or as adopting the principle that sentences of fine should hereafter be awarded sparingly. The courts *should* continue their current practice of imposing both a fine and imprisonment to adequately deter and punish those who engage in illegal lotteries. My observations regarding s 5(*a*) are simply meant to highlight the added point that a sentencing court retains the discretion to refrain from imposing *any* fine in the (unlikely) event that the circumstances render it appropriate to do so.

92 Whilst most offenders under s 5(*a*) are likely to find themselves subject to a fine of some sort, the *quantum* of fine must nevertheless be justified on the facts of each case. As the magistrate rightly pointed out, a relevant consideration would be the *value* of bets that were involved in the public lottery in question. In this regard, as mentioned at the outset of this judgment, the parties were in contention on the *extent* of the appellant's involvement in the $55,000 worth of bets collected (see [12] and [14] above). In my view, this factual dispute was largely irrelevant to the outcome of this appeal. *Even if* one were to accept the appellant's version of events, this would only mean that she was not the person *directly* responsible for keying in the purported $51,000 worth of bets. Notwithstanding this fact, the appellant's very act of *retaining* the records of these bets as a "backup" had itself facilitated and advanced the conduct of the illegal gambling syndicate *vis-à-vis* those bets. The amount of the bets involved gave an indication as to the size of the illegal operation. The magistrate was therefore eminently justified in considering the *total* bet value of $55,000 when sentencing the appellant.

93 This total bet value, when considered with the other relevant facts, rendered the imposition of a *maximum fine* manifestly excessive. With respect, this sentence failed to comport with existing case precedents, which have reserved the maximum fine for illegal lotteries conducted on a far more extensive scale. In *Ang Nguan Tong v PP* (MA 333/90/01-02) ("*Ang Nguan Tong*"), the two accused persons pleaded guilty to assisting in the conduct of a "10,000 characters" lottery which involved a total bet value of approximately $1.083m. The lottery had been conducted over a period of three years, and had similarly involved the use of technology such as computers and facsimile machines. Despite these aggravating factors, the first and second accused were respectively sentenced to eight months' imprisonment *and a fine of $100,000*, and six months' imprisonment *and a fine of $80,000*.

94 The case of *Auyok Kim Tye v PP* (MA 79/2001/01) ("*Auyok Kim Tye*") serves as an illustration of the category of cases that warrant the imposition of a maximum fine. In that case, the accused pleaded guilty and was convicted on three counts of the analogous offence of acting as a bookmaker under s 5(3)(*a*) of the Betting Act. The total value of bets over a period of three days amounted to $1.263m, and the offender had used sophisticated technology and equipment to conduct his illegal activities. In these circumstances, the court imposed a sentence of one year and six months' imprisonment and the maximum fine of $200,000 for each of the three charges.

95 The facts of the present case clearly paled in comparison to those in *Ang Nguan Tong* and *Auyok Kim Tye*. In these circumstances, the imposition of the maximum fine of $200,000 on the

present facts was unjustified. I therefore reduced the appellant's sentence of fine to one of $80,000, with four months' imprisonment in default. In contrast, I found that the duration of six months' imprisonment was consistent with existing sentencing practice and fairly reflected the severity of the appellant's offence. For these reasons, I allowed the appeal in part by lowering the fine imposed by the magistrate but maintaining the imprisonment term of six months.