

Assistance in Public Lotteries: The Approach in *Bijabahadur*

I. Introduction

1. In the 19th century, illegal gaming activities managed by syndicates were part of the general crime that was rampant in Singapore (then known as the Straits Settlement). This was a serious problem as the early inhabitants of Singapore became addicted to gambling, leading to undesirable outcomes.¹ Gambling activities came to be regarded as vices by Sir Stamford Raffles, and rules to regulate illegal public gambling were put into place.²
2. Notwithstanding the passage of years, illegal public lottery operations and the problems brought about by these operations remain prevalent in Singapore. The enactment and amendment of the Common Gaming Houses Act (“**the CGHA**”)³ in 1986 was part of an attempt undertaken by the government to curb the problem of widespread public gaming.
3. The courts have had occasion to address certain aspects of the CGHA. In particular, the recent High Court decision of *Bijabahadur Rai s/o Shree Kantrai v PP* (“*Bijabahadur*”)⁴ by the learned Judge Chan Seng Onn (“Chan J”) discussed s 5(a) of the CGHA. This article aims to address (1) the interpretation of s 5(a) of the CGHA and (2) the possible socio-economic impacts of this interpretation.

II. Brief Facts and Holding

4. Locally, TOTO bets are forms of legalized lottery, sold by Singapore Pools, the only legal lottery operator in Singapore.⁵ The Appellant, *Bijabahadur Rai s/o Shree Kantrai*, was found in possession of a handphone with messages concerning the placement of an

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¹ Munidasa Winslow, Christopher Cheok & Mythily Subramaniam, “Gambling in Singapore: An overview of history, research, treatment and policy” at p 1.

² *Ibid.*

³ Common Gaming Houses Act (Cap 49, 1985 Rev Ed) (“CGHA”).

⁴ *Bijabahadur Rai s/o Shree Kantrai v PP* [2017] SGHC 161.

⁵ Singapore Pools website <http://www.singaporepools.com.sg/en/ci/Pages/default.aspx> (accessed 1 January 2018).

illegal TOTO bet by his friend, Jasbir Singh. The Appellant also forwarded the text to a bookie.

5. Before the Magistrates' Court, the Prosecution argued that the Appellant's act of 1) accepting the bet from Jasbir and 2) forwarding the bet to the Bookie for placement of an illegal bet would amount to "assisting in the carrying on of a public lottery"⁶ under s 5(a) of the CGHA.⁷ The trial judge accepted the Prosecution's submissions and convicted the Appellant under s 5(a) of the CHGA.
6. The central issue on appeal concerned the interpretation on the word "assists" in s 5(a) of the CGHA, and whether the Appellant's act therefore fell within the scope of s 5(a).
7. In finding that s 5(a) did not extend to the Appellant's acts, Chan J overturned the Appellant's conviction under s 5(a) but nevertheless found him guilty of a lesser offence under s 9(1) read with ss 107 and 109 of the Penal Code.⁸

III. The manner in which s 5(a) was previously interpreted

8. While there is a lack of local authority directly addressing or interpreting the meaning of "assists" in s 5(a) of the CGHA,⁹ some older Malaysian cases shed some light on the interpretation of s 5(a) of the CGHA. In *Leong Yeok v Regina* ("*Leong Yeok*"),¹⁰ the accused was charged under a similar provision under the Common Gaming House Ordinances 1888¹¹ for being in possession of documents related to an illegal public lottery. J.W Bonser A.C.J quashed the conviction on the basis that the accused did not carry out an overt act connected to the carrying on a public lottery.¹²

⁶ *Supra* n 4, at [10].

⁷ CGHA, s 5(a) "Any person who 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."

⁸ *Supra* n 4, at [13].

⁹ *Id.*, at [21].

¹⁰ *Leong Yeok v Regina* [1893] SSLR 117.

¹¹ The Common Gaming House Ordinances 1888 (SS Ord No 5 of 1888), s 5(c).

¹² *Supra* n 10, at p 2.

9. The later case of *Lee Hwa Liang v Public Prosecutor* (“*Lee Hwa Liang*”)¹³ also lends some assistance on the interpretation of s 5(a) of the CGHA. Given that the provision in question was the equivalent of s 5(a) of the CGHA under the Common Gaming Houses Ordinance¹⁴ (1953) (now known as the Common Gaming Houses Act 1953)¹⁵ in Malaysia, *Lee Hwa Liang* serves as a useful guideline for the interpretation of s 5(a). Indeed, it was cited and approved locally in *Public Prosecutor v Lim Yong Meng* (“*Lim Yong Meng*”),¹⁶ where the Court dealt with the issue of whether it was an offence under s 5(a) to help others place bets with illegal lottery syndicates.¹⁷
10. In *Lee Hwa Liang*, the main issue before the Court was whether the appellant had committed the offence of “assisting in carrying on a public lottery” by the selling of one tikam board to the police inspector.¹⁸ In interpreting “assists”, Ong J came to the conclusion that:
- a. The ordinary meaning of “assists” should be preferred; i.e. the requirement of “assists” ought to be distinguished from abetment or “instigating, promoting or facilitating”,¹⁹ and
 - b. In order for an act to fall within the definition of “assists”, there must be “further participation of the [accused] in the purchaser’s activities”,²⁰ as opposed to mere passive facilitation. This would form the *nexus* of assistance between the assisting party and the party carrying on a lottery (the “*nexus*” test).²¹
11. An example cited by Ong J in *Lee Hwa Liang* usefully illustrates the ambit of what does not fall within the criteria of “further participation”. For example, just because a tikam board may itself be used to conduct a public lottery, that would not render the seller of the board criminally liable under s 5(a), because the sale would not necessarily

¹³ *Lee Hwa Liang v Public Prosecutor* [1964] MLJ 172.

¹⁴ Common Gaming Houses Ordinance 1953 (F.M. Ordinance No. 26 of 1953), s4(1)(c).

¹⁵ Common Gaming Houses Act 1953 (Act 289 w.e.f. 18 August 1983).

¹⁶ *Public Prosecutor v Lim Yong Meng* [2007] SGMC 12.

¹⁷ *Id.*, at [1].

¹⁸ *Supra* n 13, at p 3.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

mean the purchaser would turn the tikam board into a means for conducting a public lottery.²² Instead, the tikam board could be innocently used for children’s parties.²³

12. It would be different story altogether if, for example, the seller sells tikam boards to a known illegal bookie, acting as his personal tikam board supplier. In such a scenario, it can be easily envisaged that such conduct would constitute “further participation” in the illegal bookie’s activities.
13. From these string of cases, it can be inferred that the substance of “assisting in carrying on a public lottery” requires an *overt act taken* and this act must be *connected* to the bookie.

IV. The High Court’s Decision – A departure from case precedents

14. *Bijabhadur* presented the court with the opportunity to clarify the meaning of “assists” for the purposes of s 5(a) of the CGHA.
15. The court below adopted the “*nexus*” test set out in *Lee Hwa Liang*.²⁴ On appeal, after considering the “*nexus*” test,²⁵ Chan J rejected it on the basis that it was overly wide.²⁶ Chan J held that it would be undesirable if s 5(a) of the CGHA became a “catch-all” provision,²⁷ covering any instance of an accused’s direct/indirect involvement between the punter and the bookie.
16. Instead, Chan J interpreted s 5(a) to require a *purpose of assisting the bookie* behind the alleged act.²⁸ He accepted that the accused could have other concurrent purposes, as long as *the key purpose to assist* was present.²⁹ Such a purpose would be inferred from circumstantial evidence, *i.e.* arrangements between the bookie and the accused.³⁰

²² *Supra* n 13, at p 3.

²³ *Ibid.*

²⁴ *PP v Bijabhadur Rai s/o Shree Kantrai* [2016] SGMC 41 at [34].

²⁵ *Supra* n 4, at [21]-[25], [35] and [45]-[52].

²⁶ *Supra* n 4, at [25].

²⁷ *Id.*, at [29].

²⁸ *Id.*, at [27].

²⁹ *Id.*, at [28].

³⁰ *Id.*, at [36].

17. To support his interpretation of s 5(a), Chan J gave several reasons, notably that:
- a. s11(1) of the CGHA (which provides that a person found to be selling or offering for sale, giving, delivering or collecting lottery tickets or found in possession of 10 or more lottery tickets would be statutorily presumed to assisting in a public lottery)³¹ gives rise to the inference that Parliament intended for assistance to be limited to acts that *specifically* assist the bookie, and does not involve instances where the assistance is rendered to a punter in punting.³²
 - b. The observations made during the 2nd reading of the Common Gaming Houses (Amendment) Bill³³ made clear that the assistance must be coupled with the *purpose* of assisting the bookie.³⁴
18. In summary, to establish an offence under s 5(a) of the CGHA, the Prosecution would have to prove the following 2 requirements:³⁵
- a. The accused had the “purpose of assisting the bookie” in the carrying on of a public lottery (“the purpose requirement”).
 - b. The accused performed an “overt act” of assistance in the carrying on of a public lottery. Presumably, this must mean that the act must be substantially connected to the operation of the public lottery. To illustrate this, Chan J explained that whilst a bookie’s domestic helper, whom helps to do household chores in the bookie’s household may be assisting the bookie, the assistance is not directed towards operating a public lottery.³⁶

³¹ CGHA, s 11(1) “A person selling, offering for sale, giving, delivering or collecting lottery tickets or found in possession of 10 or more lottery tickets or counterfoils or duplicates of lottery tickets or of any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery shall be presumed until the contrary is proved to be assisting in a public lottery then in progress.”

³² *Supra* n 4, at [30].

³³ *Singapore Parliamentary Debates, Official Report* (2 December 1971), vol 31 (Prof Wong Lin Ken, Minister for Home Affairs) at cols 443 to 444.

³⁴ *Supra* n 4, at [34].

³⁵ *Id.*, at [55].

³⁶ *Id.*, at [37].

V. Evaluation

A. *Is Chan J's approach defensible?*

19. At first blush, the rationale for the purpose requirement seems highly persuasive. However, this brings about its own set of uncertainties.
20. Whilst Chan J had relied on a number of reasons to derive his final conclusion, none of those reasons point towards an inexorable conclusion that Parliament had necessarily intended that a specific purpose be required. It is submitted that the requirement of “assists” under s 5(a) should not be focused on the *purpose* of the accused, but rather on *the act* itself.
21. First, on a “plain reading” of s 5(a),³⁷ it is clear that Parliament had not intended to infuse any form of implied *mens rea* requirement into the provision, specifically: acting with the intention of assisting the bookie for the purposes of carrying on a public lottery. This is because had Parliament intended otherwise, the Legislature could have instead substituted “assist” with “instigating” or “promoting the carrying on of a public lottery”, which would then encapsulate an implied *mens rea* requirement of knowledge or intention.
22. In contrast to s 6 of the CGHA,³⁸ which states that “[a]ny person who advances or furnishes money for the *purpose* of establishing or conducting the business of a common gaming house... shall be guilty of an offence”, the absence of the word “assists” in s 5(a) does not lend support to Chan J’s conclusion that Parliament had intended for s 5(a) to include the requirement of a purpose behind the accused’s assistance. To conclude as such would be akin to entering the realm of unsupported conjecture, and this was also alluded to in *Lee Hwa Liang* by Ong J.³⁹

³⁷ *Supra* n 4, at [28].

³⁸ CGHA, s 6 “Any person who advances or furnishes money for the purpose of establishing or conducting the business of a common gaming house or for the purpose of a public lottery or who profits from the establishment or conduct of that business shall be guilty of an offence and shall be liable on conviction to a fine of not less than \$5,000 and not more than \$50,000 and shall also be punished with imprisonment for a term not exceeding 3 years.”

³⁹ *Supra* n 13, at p 3.

23. Secondly, s 11(1) concerns instances which give rise to a *mere presumption* that the accused was assisting in a public lottery.⁴⁰ The instances stipulated in S11(1) are all acts which are ordinarily understood to be associated with public lottery and thus, it would be logical for these acts to naturally give rise to a presumption.
24. Apart from the presumption arising in these instances, s 11(1) is uninformative as to whether the act must be specifically directed towards assisting the bookie and only the bookie. Therefore, the focus in this regard ought to be on the ordinary meaning of “assist”, which plainly means “to aid or help”⁴¹ – it would not matter who was the act of assistance was directed towards (the bookie or the punter), so long as the act contributes to the bookie’s carrying on of a public lottery.⁴²
25. Finally, Chan J relied on Professor Wong Lin Ken’s (Prof Wong) statement⁴³ from the 2nd Reading of the Common Gaming Houses (Amendment) Bill concerning the need for greater deterrence towards promoters (persons whom help to promote and/or otherwise assist the operations of illegal lotteries)⁴⁴ to support his interpretation of s 5(a). However, nowhere in the debate was any mention made regarding the requirement of a *purpose of assistance*; thus, caution must be exercised before concluding that a *mens rea* requirement is required in the first place especially where the statute clearly does not provide for a mental element,⁴⁵ as penal statutes ought to be construed strictly.⁴⁶ Instead, it is more plausible to infer that Parliament intended to raise the sentence for promoters caught under s 5(a), emphasizing the point that these promoters ought to be punished heavily.
26. Therefore, it is submitted that more likely than not, the *main emphasis* of the Amendment bill was to increase the penalty imposed *so as to achieve the object of deterring persons* from partaking in assisting the bookies, rather than to include the requirement of a purpose behind the assistance when determining whether or not the

⁴⁰ *Supra* n 31.

⁴¹ *Supra* n 13, at p 3.

⁴² *Ibid.*

⁴³ *Supra* n 33, “Running public lotteries is very profitable. They are so profitable that their promoters are not deterred by fines imposed... the maximum fine of \$6000 is “chicken feed” to the big-time promoters and hardly serves as a deterrent.”

⁴⁴ *Supra* n 4, at [34].

⁴⁵ *Halsbury’s Laws of Singapore* vol 8 (LexisNexis, 2008) at para 90.009.

⁴⁶ *Supra* n 13, at p 3.

accused would be criminally liable under s 5(a). Had Parliament truly intended to include such a requirement, there would have been proposals to amend s 5(a) in a manner similar to s 6.

27. Support for this proposition can be found in *See Choon Chye v PP*,⁴⁷ where the learned CJ Yong Pung How (as he then was) expressed that “[i]llegal lotteries are a *public evil... those who participate in them* are usually undeterred by the imposition of fines alone”.⁴⁸ Similarly, the focus was on the object of the CGHA to deter persons from participating in the carrying on of illegal gambling, without restrictions on the mental state of the persons involved.
28. Accordingly, for the above reasons, the word “assists” under s 5(a) of the CGHA should not be interpreted to include an underlying purpose to assist a bookie. Instead, the focus ought to be whether the act constituted some form of *help* or *aid* to the bookie in making the illegal bet.

B. *Difficulties in the application of Chan J’s approach*

29. Even if Chan J’s approach were to be adopted, the precise application of the 2-limb test remains uncertain. For example, how would the test be applied if assistance was made by A to a middle-man B, with the purpose of assisting B in placing the bets with the bookie C? Undoubtedly, if there is enough evidence to prove that B had the purpose of assisting C, B would be captured under s 5(a) of the CGHA.
30. However, it remains uncertain as to whether s 5(a) would extend to apply to A. First, does Chan J’s requirement of purpose require A to have the sole purpose of assisting the bookie personally? Or does it extend to cover situations where A would be liable *so long as* he had the purpose of facilitating the bookie’s operations, even though this was done via a middle-man? Unfortunately, these uncertainties have not yet been addressed by the Courts and perhaps, reverting to the traditional interpretation of the word “assists” in s 5(a) may help to steer the ship away from such murky waters.

⁴⁷ *See Choon Chye v PP* [1992] 2 SLR 98.

⁴⁸ *Id.*, at [15].

31. Nevertheless, what is certain is this: the new restrictions on the applicability of s 5(a) would allow more room for potential offenders to escape liability as the prosecution would now bear the burden of proving an additional *mens rea* requirement. This would make it easier for Accused persons to disclaim liability in situations where the Accused assists the punter in placing a bet with the bookie without assisting the bookie directly.

VI. Conclusion

32. Ultimately, the object of the CGHA is to curb illegal public gambling and its attendant social problems. In light of this, acts that may contravene the object of the CGHA notwithstanding the absence of any purpose or intention ought to be captured under s 5(a) of the CGHA so as to avoid undermining the deterrent effect of the CGHA. It remains to be seen how the aforementioned concerns will be addressed by the Singapore Courts in the time to come.
33. In the meantime, notwithstanding Chan J's decision, potential offenders ought to refrain from being part of a bookie's affairs lest they find themselves in a position where they might be criminally liable.