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CONTENTS

Legal Scribes is an online publication that aims to include case notes, commentaries, legislative updates and succinct articles on contemporary issues relating to the law and legal community.

School of Law
Singapore University of Social Sciences
463 Clementi Road, Singapore 599494
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Editor's Foreword

1. This issue of Legal Scribes features two commentaries on cases of interest.

2. Ms Wang Yanzhen (who is a student on the JD Programme) has written an article on the restatement of the law governing contractual deposits by the Court of Appeal.

3. Associate Professor Yap Ji Lian has written an article on the new sentencing framework established by the High Court in relation to directors who fail to use reasonable diligence in the discharge of their duties in certain specific contexts.

4. Finally, Mr Alexander Woon (who is a Lecturer at the School of Law) shares his insights on the eternal question of what law is and why it matters.

5. We are most grateful to our Dean, Professor Leslie Chew, SC, for his review of this edition of Legal Scribes.

6. We hope you enjoy reading this latest issue of Legal Scribes.

Ruth Yeo
Editor, Legal Scribes
Senior Lecturer, School of Law
Singapore University of Social Sciences

Article

Earnest or Excess? Clarifying the Law of Deposits

Li Jialin and another v Wingcrown Investment Pte Ltd [2024] SGCA 48

I. Introduction

1. In *Li Jialin and another v Wingcrown Investment Pte Ltd* [2024] SGCA 48 ("*Li Jialin*"), the Singapore Court of Appeal ("the Court of Appeal") clearly restated the law governing contractual deposits.[1] The Court of Appeal refined the analytical framework governing the recoverability of deposits which was first articulated in *Hon Chin Kong v Yip Fook Mun and another* [2018] 3 SLR 534 ("*Hon Chin Kong")*,[2] reformulating it into a three-step framework.[3] It reaffirmed that forfeiture by the payee is available only where the stipulated sum is reasonable as an earnest at the time of contracting and thus qualifies as a "true deposit".[4] The Court of Appeal further clarified that deposits are not compensatory in character,[5] and that enforceability does not depend on a genuine pre-estimate of loss (which is a separate inquiry confined to the penalty doctrine).[6] In doing so, the Court of Appeal preserved the conceptual distinction between the law of deposits and the law of penalties.

2. The central issue was whether a developer could validly forfeit any part of a contractually stipulated deposit amounting to approximately 63% of the purchase price when the purchaser failed to complete the transaction.[7] The Court of Appeal rejected both the developer's attempt to forfeit the entire sum and its belated effort to justify forfeiture of a reduced portion equivalent to 20% of the purchase price.[8] It held that a deposit that is excessive and unreasonable as an earnest at contract formation does not qualify as a true deposit and is

[1] *Li Jialin* at [4], [30].
[2] *Hon Chin Kong* at [143]
[3] *Li Jialin* at [73].
[4] *Li Jialin* at [73].
[5] *Li Jialin* at [49]–[52].
[6] *Li Jialin* at [48]–[49].
[7] *Li Jialin* at [1], [11], [74].
[8] *Li Jialin* at [3], [74]–[75].

incapable of forfeiture by the payee, whether in whole or in part.[9] Importantly, such excessiveness cannot be cured retrospectively through partial forfeiture, nor can the sum be salvaged by recharacterisation as liquidated damages.[10]

II. Factual background[11]

3. The appellants ("the purchasers") initially entered into a sale and purchase agreement in 2015 for a residential unit in The Crest ("the Property"), developed by the respondent ("the developer"), at a purchase price of $1,785,000. The purchasers paid instalments totalling $1,217,550 pursuant to construction milestones but defaulted from September 2016. The developer subsequently terminated the agreement and issued a notice purporting to deduct $379,195.58 from the sums paid. Of this amount, $357,000, representing 20% of the purchase price, was stated to be forfeited, while $22,195.58 was attributed to interest, taxes and other expenses. The remaining balance of $838,354.42 (the "Refund Amount") was stated to be refundable to the purchasers.

4. As the purchasers remained interested in acquiring the Property, the parties entered further negotiations. In April 2018, they executed a fresh option to purchase ("Second Option to Purchase") at an increased price of $1,900,000. The Second Option to Purchase recorded the earlier aborted transaction and set out new terms. Under this arrangement, it was agreed that the $357,000 previously treated as forfeited would *not* be forfeited but was instead credited as the option fee for the new transaction.[12] The $838,354.42 Refund Amount was to be credited towards the deposit payable upon exercise of the option, instead of being returned to the purchasers. Upon exercise of the option, a distinct binding contract for the sale and purchase of the Property would arise, governed by the "Terms of Sale" set out in the Second Option to Purchase.[13]

5. Upon exercise of the Second Option to Purchase on 30 April 2018, the "Deposit" was defined in the Terms of Sale as $1,195,354.42, comprising the $357,000 option fee and the

[9] *Li Jialin* at [3], [60], [73(c)], [75].
[10] *Li Jialin* at [3], [60], [74]
[11] *Li Jialin* at [6]–[18]
[12] *Li Jialin* at [9(b)].
[13] *Li Jialin* at [9]–[10]

$838,354.42 Refund Amount, and amounting to approximately 63% of the $1,900,000 purchase price.[14] The agreement incorporated the Law Society of Singapore's Conditions of Sale 2012.[15] Under Condition 15, where a party fails to complete the sale on the stipulated completion date, the other party may serve a Notice to Complete requiring completion within 21 days of service. Condition 15.9(c)(i) further provides that if the Purchaser does not comply with an effective Notice to Complete, the developer may "forfeit and keep any deposit paid by the [p]urchaser."[16]

6. The purchasers again failed to complete the sale despite multiple time extensions. On 24 October 2018, the developer served a Notice to Complete requiring completion within 21 days. The purchasers did not comply with the notice. On 20 November 2018, the developer terminated the agreement and asserted entitlement to forfeit the entire Deposit of $1,195,354.42.[17] In March and June 2019, the purchasers' solicitors wrote to request a refund of the full deposit, but the developer rejected those requests on both occasions.[18]

7. On 21 March 2023, more than four years after termination of the agreement, the purchasers issued a letter of demand seeking repayment of the entire Deposit of $1,195,354.42 together with interest.[19] On 10 April 2023, the developer revised its position and stated that it would retain only $380,000, representing 20% of the $1,900,000 purchase price. It further asserted entitlement to $326,397.38 as expenses incurred in connection with the two aborted transactions.[20] The remaining sum of $488,957.04 was refunded to the purchasers on 19 April 2023.[21] The purchasers nevertheless commenced proceedings seeking a declaration that the stipulated Deposit did not qualify as a true deposit and was therefore incapable of forfeiture, claiming restitution with interest.[22]

[14] *Li Jialin* at [11].
[15] *Li Jialin* at [12].
[16] *Li Jialin* at [12], [55]
[17] *Li Jialin* at [13]–[15].
[18] *Li Jialin* at [14]–[15].
[19] *Li Jialin* at [17].
[20] *Li Jialin* at [17].
[21] *Li Jialin* at [17].
[22] *Li Jialin* at [18].

III. The High Court's decision

8. At first instance, the High Court accepted the developer's submission that the relevant inquiry should focus on the $380,000 ultimately retained, rather than on the contractually stipulated Deposit of $1,195,354.42.[23] On this approach, the court did not examine whether the stipulated Deposit was reasonable as an earnest at the time of contracting. Instead, it assessed the reasonableness of the reduced sum actually forfeited in determining whether it qualified as a true deposit capable of retention.

9. The High Court further held that Condition 15.9(c)(i) of the Law Society of Singapore's Conditions of Sale 2012, which permits the developer to "forfeit and keep any deposit paid by the [p]urchaser", was sufficiently broad to confer a discretion to retain less than the full stipulated Deposit. [24] The provision was thus construed as allowing selective forfeiture. On that basis, the court applied the framework articulated in *Hon Chin Kong* to assess the reduced sum of $380,000 in isolation, rather than the contractually stipulated Deposit of $1,195,354.42.[25] It concluded that the sum of $380,000 was reasonable as an earnest and therefore constituted a true deposit capable of forfeiture by the payee.[26] The purchasers appealed against this decision.

IV. The Court of Appeal's decision

10. The Court of Appeal overturned the High Court's decision and held that the developer was not entitled to retain any part of the stipulated Deposit. The Deposit sum of $1,195,354.42, representing approximately 63% of the purchase price, was held to be excessive and not reasonable as an earnest at the time of contracting. [27] No evidence of special circumstances was adduced to justify such a quantum. [28] Consequently, the Deposit did not qualify as a true deposit and could not be forfeited in whole or in part. [29]

[23] *Li Jialin* at [20].
[24] *Li Jialin* at [2], [20].
[25] *Hon Chin Kong* at [143]; *Li Jialin* at [19]–[20]
[26] *Li Jialin* at [20].
[27] *Li Jialin* at [74].
[28] *Li Jialin* at [74].
[29] *Li Jialin* at [3], [75]

11. A central premise of the Court of Appeal's reasoning was that the inquiry into reasonableness is fixed at the point of contractual formation. [30] The character of a stipulated deposit must therefore be assessed by reference to the sum agreed at the time the contract was concluded, rather than by reference to the amount ultimately forfeited. If the deposit was excessive at inception, subsequent moderation cannot retrospectively render it reasonable. The Court thus made clear that the proper inquiry is not how much of the deposit may be retained, but whether any contractual right of forfeiture arises at all.[31]

12. The Court of Appeal also rejected the construction of Condition 15.9(c)(i) adopted at first instance. It held that the plain language of the provision did not confer a discretion on the developer to retain only part of a contractually defined deposit. [32] The phrase permitting the developer to "forfeit and keep any deposit paid" was construed as referring to the entirety of the sum paid as a "deposit", rather than to portions of it. The clause therefore operated on an all-or-nothing basis and did not authorise selective forfeiture.

13. Even on the assumption that Condition 15.9(c)(i) permitted discretionary partial forfeiture, the Court of Appeal held that the developer's belated decision in April 2023 to retain only $380,000 lacked contemporaneous justification and was inconsistent with its earlier position.[33] Following termination in November 2018, the developer had repeatedly maintained in November 2018, April 2019 and June 2019 that it was entitled to forfeit the entire Deposit of $1,195,354.42, and it in fact retained that sum for more than four years despite requests for refund.[34] The subsequent moderation occurred only after a formal demand for repayment and could not retrospectively validate the forfeiture.[35] In those circumstances, the Court concluded that the revised position could not affect the legal analysis that the stipulated Deposit was unreasonable as an earnest. Thus, the contractual right of forfeiture failed entirely, and the purchasers were entitled to recover the Deposit under the general law, subject to the separate treatment of the option fee.

[30] *Li Jialin* at [3], [61].
[31] *Li Jialin* at [3].
[32] *Li Jialin* at [57]–[60].
[33] *Li Jialin* at [56].
[34] *Li Jialin* at [14]–[15],[56],[59].
[35] *Li Jialin* at [59]–[60].

14. Before reformulating the *Hon Chin Kong* framework, the Court of Appeal first traced the historical development of the law of deposits, concluding that deposits continue to play an important role in modern commerce and thus ought to remain part of the law.[36] The Court of Appeal then emphasized *why* the law of deposits should continue to be preserved as *distinct* from the law of penalties.[37] First, the two areas of law have different historical origins which resulted in the courts traditionally keeping them distinct.[38] Second, they serve different juridical functions: the penalty rule operates in the sphere of secondary obligations and is concerned with compensation, while the function of deposits is not compensatory but earnest-based.[39] Deposits signal the purchaser's seriousness, filter out frivolous or fickle purchasers, and motivate performance because the purchaser has already parted with the money.[40] Since deposits are not intended to substitute for damages, the penalty rule has no application to them.[41] Given that deposits and damages serve entirely different purposes, the Court of Appeal found no sound reason to subsume the law of deposits within the law of penalties. [42]

15. Against that conceptual backdrop, the Court of Appeal refined and restated the analytical framework first articulated in *Hon Chin Kong* for determining the recoverability of contractual deposits. [43] The reformulated analysis comprises three steps:[44]

> (1) First, the court considers whether the contract confers a right of forfeiture over the sum alleged to be a deposit upon the payer's breach. This depends on the parties' intentions and the express or implied terms of the contract. If no contractual right of forfeiture exists, there is no need to further inquire into reasonableness, and any recoverability will instead be determined under the general law notwithstanding the breach.
>
> (2) Second, where a contractual right of forfeiture is established, the court examines whether the stipulated sum is reasonable as an earnest at the time of contracting, to

[36] *Li Jialin* at [43]–[44].
[37] *Li Jialin* at [34]–[53].
[38] *Li Jialin* at [35]–[42].
[39] *Li Jialin* at [48]–[49] and [52].
[40] *Li Jialin* at [45].
[41] *Li Jialin* at [49].
[42] *Li Jialin* at [52].
[43] *Li Jialin* at [62]–[73].
[44] *Li Jialin* at [73].

qualify as a true deposit. Generally, the sum is regarded as reasonable if it is customary or conventional. If the sum exceeds conventional or customary levels, the party seeking forfeiture bears the burden of demonstrating special circumstances to justify the departure.

(3) Third, if the stipulated sum is reasonable as an earnest, it constitutes a true deposit and may be forfeited. Conversely, if it is not reasonable, it does not qualify as a true deposit and cannot be forfeited. Any express or implied contractual right to forfeit is thus unenforceable, and the claimant's right to recovery will be left to be decided under the general law.

16. Applying the reformulated framework to the facts,[45]the Court of Appeal held that the stipulated Deposit of $1,195,354.42 could not qualify as reasonable earnest, with no evidence adduced to justify such a substantial departure from conventional deposit levels. The developer's subsequent attempt to retain a reduced sum of $380,000 further undermined its position, as it effectively acknowledged that the original quantum could not be defended as reasonable at the time of contracting. The contractual right of forfeiture therefore failed. Accordingly, the purchasers were entitled to recover the entire deposit, subject only to the $357,000 option fee, which the developer was entitled to retain as consideration for granting the Second Option to Purchase.[46]

V. Commentary and Analysis

17. The starting point of the Court of Appeal's reasoning is the juridical nature of a deposit. The touchstone of a deposit is its character as earnest. The decision clarifies that a deposit is not merely part-payment of the purchase price, but earnest money paid at contract formation as part of the parties' primary risk allocation[47] to signal seriousness of intent and incentivise performance.[48] Whether forfeiture is available therefore turns not on proof of loss, but on whether the stipulated sum qualifies, in law, as a true deposit.

[45] *Li Jialin* at [74]–[75].
[46] *Li Jialin* at [83]–[85].
[47] *Li Jialin* at [32],[37]
[48] *Li Jialin* at [45].

18. The Court's characterisation of deposits as earnest securing contractual performance underpins its insistence on a structural distinction between deposits and liquidated damages clauses, which operate as secondary compensatory obligations upon breach.[49] As explained in *Denka Advantech Pte Ltd and another v Seraya Energy Pte Ltd and another and other appeals* [2021] 1 SLR 631,[50] the penalty rule regulates secondary obligations triggered by breach of a primary contractual obligation that stipulate compensatory consequences in the form of damages. Deposits do not operate in the sphere of secondary obligations and are not intended to compensate for breach. The true sting of forfeiture lies not in the imposition of damages liability upon the purchaser, but in the fact that the character of the payment as earnest precludes restitutionary recovery of the sum. The penalty doctrine therefore has no application to deposits as such.[51] Where a stipulated sum is unreasonable and fails to qualify as a true deposit, it does not become penal or compensatory; it simply loses its character as reasonable earnest and cannot be forfeited.[52]

19. The relevant inquiry is accordingly not whether the stipulated sum is punitive, but whether it properly functions as earnest.[53] Analysing an excessive deposit through the penalty lens would import the wrong analytical metric, that is, a pre-estimate-of-loss inquiry, into a doctrine concerned with commitment and risk allocation at formation. Maintaining this analytical boundary also preserves remedial coherence: forfeiture of a true deposit does not substitute for damages, and a developer may still pursue damages separately, subject to credit for any sum validly retained.

20. A distinct and equally significant aspect of the judgment concerns timing. The Court insisted that reasonableness must be assessed ex ante, at the time of contract formation.[54] The High Court's focus on the reduced sum ultimately retained was rejected because it inverted the proper analytical sequence. If a stipulated deposit was disproportionate at inception, subsequent moderation cannot retrospectively render it reasonable. Allowing ex post moderation would enable parties to stipulate inflated deposits as leverage, only to

[49] *Li Jialin* at [48]–[52].
[50] *Denka Advantech Pte Ltd v Seraya Energy Pte Ltd* [2021] 1 SLR 631 at [92], [152], [185(b)].
[51] *Li Jialin* at [49], [70]–[71].
[52] *Li Jialin at* [71], [73(c)]
[53] *Li Jialin* at [51]–[52], [73(b)]
[54] *Li Jialin* at [3], [61].

defend a later figure that appears defensible. The inquiry is therefore binary: either the deposit was objectively reasonable at formation and forfeitable, or it was not.

21. In conducting that ex ante inquiry, the Court identified a principled reference point. The Court quoted the prior authority of *Hon Chin Kong*, which recognised that in conveyancing practice, a 10% deposit serves as a customary benchmark.[55] This is not a rigid rule, but a commercially grounded reference point for assessing reasonableness.[56] Where a stipulated deposit materially exceeds conventional levels, the burden rests on the party seeking forfeiture to demonstrate special circumstances justifying the departure. [57] On the facts, a deposit amounting to 63% of the purchase price could not plausibly be justified as reasonable earnest.

22. The invocation of "special circumstances", however, leaves the doctrine's outer limits uncertain. The judgment does not articulate the evidential threshold required or define the categories of commercial risk capable of justifying substantial deviation from conventional practice. Whether special circumstances such as heightened financing exposure, unusual opportunity costs, asset-specific risks or prior dealings suffice remains an open question. The scope of permissible commercial autonomy within the true deposit doctrine will therefore require further judicial clarification.

23. The emphasis on justification at formation also carries evidential and practical drafting implications. Where parties stipulate a deposit substantially above conventional benchmarks, the commercial rationale for that quantum must be objectively capable of proof. Such rationale should ideally be recorded contemporaneously in documentary form, as such records may provide important evidence in later proceedings. As challenges to forfeiture may arise years after contract formation, justification cannot depend on retrospective reconstruction. A heightened deposit unsupported by contemporaneous commercial logic risks being characterised as arbitrary rather than as reasonable earnest.

[55] *Ho Chin Kong* at [143]
[56] *Li Jialin* at [64(d)], [73(b)],
[57] *Li Jialin* at [73(b)].

24. The decision also raises unresolved questions about discretionary forfeiture clauses in contracts purporting to confer discretion to retain only part of a deposit. Although Condition 15.9(c)(i) was construed as operating on an all-or-nothing basis,[58] differently drafted clauses purporting to permit forfeiture of "a part" of a deposit or of a "reasonable sum" upon non-completion present a distinct scenario. Whether such drafting alters the characterisation analysis, or whether substance will prevail over form, remains for future determination.

25. The Court's refusal to permit partial forfeiture of an excessive deposit reinforces the binary logic of the true deposit doctrine. Once a stipulated sum fails to qualify as a true deposit, the contractual right of forfeiture collapses entirely. This approach enhances conceptual certainty and doctrinal coherence but may constrain commercial flexibility in complex commercial transactions where substantial upfront payments reflect negotiated risk distribution and strategic considerations. The more difficult question is how the reasonableness inquiry should operate where there is no conventional or customary benchmark for the particular transaction. While residential conveyancing provides relatively standardised reference points, sophisticated commercial transactions may involve bespoke risk allocation structures and substantial upfront payments for which no clear market norm exists. Whether the same strict stance will be maintained in more sophisticated commercial contexts remains to be seen.

26. The insistence on doctrinal boundaries is equally evident in the Court's refusal to salvage forfeiture by recharacterising the payment as liquidated damages subject to the penalty analysis.[59] Liquidated damages are agreed secondary obligations triggered by breach, whereas deposits (if truly earnest) are part of the parties' primary allocation at formation. The Court therefore treated characterisation as determinative: once the stipulated sum failed to qualify as a true deposit, it could not be upheld through reclassification as liquidated damages.

[58] *Li Jialin* at [57]–[60]
[59] *Li Jialin* at [51], [70]–[71]

27. Where a payment does not qualify as a true deposit, recovery may follow. To be entitled to such recovery, the payer must establish an available cause of action under the general law, including, where appropriate, unjust enrichment.[60] One possible route is restitution for failure of basis (or failure of consideration in older terminology), where recovery rests on the premise that the sum was paid on the footing that the transaction would proceed to completion. If that basis fails and no contractual entitlement to forfeit exists, retention lacks juridical justification. [61] Restitution thus operates residually, preserving coherence between contractual allocation and remedial consequence. Accordingly, an invalid forfeiture leaves the payer to pursue recovery under the general law, subject to satisfying the elements of the relevant cause of action such as unjust enrichment.

28. Although arising in a conveyancing context, the reasoning has broader commercial significance. Deposits frequently feature in share purchase agreements, construction contracts and other high-value transactions. Substantial upfront payments labelled as deposits will be scrutinised by reference to their juridical function. Where parties intend to stipulate breach-triggered compensation, the appropriate mechanism remains a properly drafted liquidated damages clause subject to penalty analysis, rather than reliance on an inflated deposit.

VI. Conclusion

29. *Li Jialin* confirms that forfeiture of deposits is confined to sums that genuinely function as earnest and are reasonable at the time of contracting. Excessiveness at formation is fatal and cannot be cured by later moderation or doctrinal recharacterisation. By reaffirming the structural separation between deposits and secondary breach obligations, the Court strengthened the internal coherence of Singapore contract law.

30. While important questions remain, particularly the content of "special circumstances" and the treatment of bespoke commercial deposit clauses, the Court's direction is clear: reasonableness is assessed at the time of contracting, forfeiture operates on an all-or-

[60] *Li Jialin* at [80]–[84]
[61] *Li Jialin* at [75], [80]

nothing basis, and the enforceability of a stipulated payment depends on its substantive function as earnest rather than merely the label attached to it.

Wang Yanzhen
Student Contributor, Year 2 (JD)
Singapore University of Social Sciences

Article

Directors Who Fail to Use Reasonable Diligence: A Revised Sentencing Framework

Public Prosecutor v Zheng Jia [2025] 3 SLR 1290

Introduction

A new sentencing framework relating to directors who fail to use reasonable diligence in the discharge of their duties in certain specific contexts was established by the High Court of Singapore in the case of *Public Prosecutor v Zheng Jia*[1] ("*Zheng Jia*"). In that case, the court stated that earlier case of *Abdul Ghani bin Tahir v Public Prosecutor*[2] ("*Abdul Ghani*") should not be relied on as a sentencing precedent in relation to offences under section 157(1) of the Companies Act 1967 ("CA").[3]

Analysis in *Zheng Jia* relating to *Abdul Ghani*

In the earlier case of *Abdul Ghani*, it was held in relation to section 157(1) of the CA that "the starting point for purely negligent breaches of the duty to exercise reasonable diligence is a fine (where there are no weighty aggravating factors) with custodial sentences being imposed where the director breaches this duty intentionally, knowingly or recklessly."[4]

In *Zheng Jia,* the court disagreed with the view in *Abdul Ghani* that "the preservation of Singapore's commercial environment should militate against the imposition of custodial sentences, save where the offending director had acted "intentionally, knowingly or recklessly.""[5] The court in *Zheng Jia* observed that such an approach overlooked the significant differences between a director whose form of directorship "entails looking away from the affairs of the company, and one who is committed to the best interests of the company but makes a mistake in the course of carrying out his duties".[6] The court observed that the facts in

[1] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290
[2] *Abdul Ghani bin Tahir v Public Prosecutor* [2017] 4 SLR 1153
[3] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [47]
[4] *Abdul Ghani bin Tahir v Public Prosecutor* [2017] 4 SLR 1153 at [166]
[5] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [47]
[6] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [47]

Zheng Jia involved an offender who is a professional chartered accountant "whose business model was predicated on him being registered as a locally resident nominee director of numerous companies incorporated for foreign clients, but who would then exercise no control or supervision over the affairs of those companies whatsoever."[7] The court in *Zheng Jia* stated that directors "who assume their offices with every intention of abdicating their duty under s 157(1) of the CA present serious risks to their companies specifically, and Singapore's corporate and financial ecosystem generally, and they are acting knowingly, if not intentionally."[8] For these reasons, the court in *Zheng Jia* held that *Abdul Ghani* should not be relied on as a sentencing precedent in relation to offences under section 157(1) of the CA.

The Revised Sentencing Framework

A revised sentencing framework ("Revised Framework") was set out in *Zheng Jia*. In describing the Revised Framework, the court in *Zheng Jia* stated that "the relevant factual context is confined to this type of case involving professional directors whose business models were premised on providing no or inadequate oversight over the affairs of the companies".[9]

The Revised Framework set out in *Zheng Jia* has three steps.

First Step: Identify the relevant offence-specific factors

The first step in the Revised Framework was to identify all the relevant offence-specific factors.[10] The court in *Zheng Jia* set out a non-exhaustive list of factors that the court may consider in relation to offences of the kind involved in that case:

> (a) the extent of due diligence undertaken by the director in relation to the activities of the company and/or the client;
>
> (b) efforts made by the director to monitor or review transactions in the company's bank account(s);

[7] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [45]
[8] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [47]
[9] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [50]
[10] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [51]

(c) the extent to the which the director knew – or should have known – that failing to exercise reasonable diligence in overseeing the affairs of the company could (or even *would*) enable abuse of the corporate structure by others;

(d) the duration of offending (and in particular, whether the offending conduct was a one-off breach or part of a wider pattern);

(e) whether the offending conduct was pursued as part of a business or other profit-driven scheme (and, if so, the extent of the profits derived from or attributable to the offending conduct);

(f) whether the director made any efforts at concealing his wrongdoing;

(g) whether there was a transnational element to the offence (such as the involvement of cross-border criminal syndicates); and

(h) the nature and extent of the harm that resulted to the company and/or third parties.[11]

The court in *Zheng Jia* emphasized that a sentencing judge must be "sensitive to the particular facts of each case in identifying the relevant offence-specific factors".[12]

Second Step: Situate the offence within the appropriate sentencing band

The second step was to situate the offence within the appropriate sentencing band, in order to arrive at an indicative sentence.[13] The court in *Zheng Jia* set out the following sentencing band for offences of the kind that arose in that case:

	Number of offence-specific factors	Indicative starting sentence
Band 1	1-3	Up to four months' imprisonment
Band 2	4-5	Five to eight months' imprisonment
Band 3	> 6	Nine to 12 months' imprisonment

[11] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [51]
[12] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [52]
[13] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [53]

The court in *Zheng Jia* stated that "the custodial threshold will be presumptively crossed for offences of the present category…and the onus will be on the director to explain why that should not operate in his or her case".[14]

The court in *Zheng Jia* emphasized that the above table should only be treated as setting out guidelines, and that "the court must in every case consider the gravity of the salient factors to determine if the offence would be more properly situated in a higher or lower band (as well as where the offence falls *within* the applicable band)."[15]

Third step: Calibrate the indicative sentence for offender-specific factors

Having arrived at an indicative sentence in the second step, the third and final step involved adjusting that indicative sentence based on offender-specific factors relevant to the case.[16] The court in *Zheng Jia* observed that these factors are generally uniform across all criminal offences.[17] These factors included:

(a) other offences taken in consideration for the purposes of sentencing;

(b) the offender's relevant antecedents;

(c) remorse (or the lack thereof) on the offender's part;

(d) whether the offender entered into a timeous plea of guilt;

(e) the extent of voluntary restitution made by the offender; and

(f) whether the offender voluntarily co-operated with the authorities in the course of investigations into the offence.[18]

Application of the Revised Framework in relation to offences of abetment

The court in *Zheng Jia* stated that the Revised Framework was "equally applicable to the

[14] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [54]
[15] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [55]
[16] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [56]
[17] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [56]
[18] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [56]

sentencing of accessories to a breach of s 157(1) of the CA"[19]. The court noted that the key difference lay in the type of offence-specific factors to be considered in the first step of the Revised Framework.[20] The court stated that "the focus will shift to factors such as the abettor's reasons for having aided or instigated the director's breach of duty; any disparity in knowledge or expertise between the abettor and the director (particularly in relation to the duties of the latter's office); and whether the abettor's acts were motivated by profit."[21] The court emphasized that these were "but some factors that the court may have regard to and, ultimately, a commonsensical approach should be taken in every case to identifying the pertinent offence-specific factors."[22]

Application to the facts of *Zheng Jia*

Applying the Revised Framework in the consideration of both charges in *Zheng Jia*, the court substituted the fines imposed by the District Judge with an aggregate custodial sentence of ten months' imprisonment.[23]

Conclusion

The Revised Framework in *Zheng Jia* should serve as a warning to directors to take very seriously the duty under section 157(1) of the CA to use reasonable care in the discharge of their duties. The Revised Framework provides an important means by which the soundness and integrity of Singapore's business environment can be maintained.

Yap Ji Lian
Associate Professor
School of Law
Singapore University of Social Sciences

[19] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [57]
[20] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [57]
[21] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [57]
[22] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [57]
[23] *Public Prosecutor v Zheng Jia* [2025] 3 SLR 1290 at [61] and [63]

Explainer

What is Law? (Baby, don't hurt me)

Why does law matter?

Most people probably go about their lives without ever thinking about the law. If you're lucky, you may never step foot in a court of law. To most people, the law is something that only exists when someone is in trouble: when a crime has been committed or when a divorce is needed, for example.

This viewpoint is understandable, but mistaken. Just because something is invisible doesn't mean that it's not important: gravity, for example, is something we don't often think about but is nonetheless always present and always affects us (with the notable exception of astronauts and the like, but never mind them for now). The law is like that: you may not realise it, but the law is always present and constantly affects your life.

Every morning you wake up, maybe in a home that you own or rent. The law is already operating — the very concept of ownership is created by law, specifically, the law of property. It's what gives you the right to keep other people out of your home. You wait at a traffic light to cross the street — you're subject to traffic laws, which keep you, other pedestrians, and drivers safe. You buy a cup of coffee from a local coffeeshop — you might not realise this, but you're actually entering into a legal contract any time you purchase goods or services. You check your phone as you sip your coffee — a complex web of laws makes it possible for you to look at funny pictures of cats in hats, from domestic regulation of internet service providers, international law governing the use of undersea fibre optic cables to, wait for it, space law (of which there is a surprising amount), which governs the operation of satellites.

Knowing about the law is therefore important. These legal rights, and crucially also responsibilities, belong to everyone. The law is for *everyone*, not just for lawyers, judges and legislators.

The law is voluminous, complex, and highly technical. Even though legal rights and responsibilities belong to ordinary people, and affect their lives in profound ways, these legal

concepts are poorly understood by ordinary people and often poorly explained by legal professionals. This is a problem: laws are man-made, so if they are poorly designed and poorly explained, then that is squarely a human failing. Law is not like, for example, medicine: medicine is complex because human biology is complex, and there's nothing anyone can do about that.

Imagine you're forced to play a board game. You sit down at the table, the game is already going. You ask what the rules are, and someone drops a huge manual on you. You're told to start playing, even though you haven't had time to read the manual and no one's explained the rules to you. If you get the rules wrong, you go to jail — don't pass go, don't collect your cash. Would that be fair?

This series of Explainers is an attempt at improving "access to justice". Access to justice means that ordinary people ought to be able to *use* the law effectively when they need it. There's no point in having laws that look pretty on the books but that don't serve any purpose in real life.

Access to justice starts with understanding. You can't use the law effectively if you don't know what it is. The hardest part of any problem is getting started: if you don't even know enough to know what you don't know, you're stuck. Asking the right questions is, in law, often just as important as getting the right answers (and sometimes, there are no "right" answers, but we'll get to that later).

Who is this for?

This series is an attempt to improve access to justice. It's written for a lay audience — people with no special training or understanding of the law. This series will strive to be accurate and rigorous, but of course, there will be simplifications and streamlining to keep it readable. Remember, the point of this series is "accessibility".

I hope that this series will be useful to a broad range of people: non-law professionals seeking a deeper understanding of legal issues, people with a legal problem who don't even know where to start looking for help, students in their first year of law school, and maybe even students contemplating applying to law school ("It's a trap!" — Admiral Ackbar).

While this series is applicable to Singapore law, many concepts will be useful for understanding law in other Commonwealth countries as well. I have also tried to keep the concepts at a high enough level of generality that they will not quickly become outdated.

What do we mean by "law"?

Let's start at the beginning, which means defining our terms. One of the important things to know about the law is that is it inherently a discipline of *communication*. Before we can have a meaningful discussion, we need to make sure we're all talking about the same thing.

Consider the word, "hot". This word has different meanings — what a grammarian might call "lexical ambiguity". If someone says, "that man is hot", it could mean that the man is experiencing a high body temperature, the literal meaning of the word, "hot". Alternatively, it could mean that the man is sexually attractive, a metaphorical meaning of the word, "hot". Therefore, if I say to you, "Nonsense, that man is not hot, it is freezing in here!", I would be talking at cross purposes with you if what you had meant is that the man is sexually attractive.

So, what do we mean by "law"? There are many ways in which we use the word, "law".

Sometimes, we talk about, for example, the law of gravity — here, by law, we mean a natural or physical law, a rule that describes some aspect of the world in which we live. Such laws are not *prescriptive*, they do not tell anyone or anything what to do, they are merely *descriptive*, they simply explain the way things are. We are not concerned with these laws.

Some people might talk about the law as laid down by a god or deity. Think of, for example, the Ten Commandments in the Christian Bible. Such laws are clearly prescriptive, but again, these types of law are beyond the scope of this series. These are what we might call *divine* laws. And often, derived from divine laws, are rules of morality or ethics, such as what is sometimes called the "Golden Rule" — treat others as you would want other to treat you. But morality is distinct from law — what is moral is not always legal, and what is legal is not always moral. It is possible for there to be laws that is manifestly immoral: for example, laws in Nazi Germany that enabled the Holocaust. So, again, we are not really concerned here with divine, moral, or ethical laws.

What we are talking about here is a system of man-made laws, that govern the behaviour of people. These laws are often expressed as rules to be followed. They are inherently prescriptive.

Sometimes, these laws overlap with divine or moral laws: for example, the moral rule, "Thou shalt not kill", overlaps with the man-made law of murder. But they are not the same thing. Very often, in making law, lawmakers take reference from moral rules, but unless and until such a moral rule is enacted into law, it has no legal force all on its own. But equally often, man-made laws do not mirror any moral rule — for example, there are law governing where you may park your car, which have nothing to do with morality at all but are merely matters of social organisation.

The kind of law we are concerned with, therefore, is the kind of law that is made by some kind of worldly authority. This authority is known as a sovereign — in ancient times, the sovereign was usually a single person, a king, queen or emperor. In modern times, it is nation states that are considered sovereign — this means they have the power to make their own laws, within their territorial boundaries. A sovereign makes law within its territory, and also enforces the law if it is broken — generally, if you break the law made by a sovereign, some law enforcement agency, like the police force, will come after you. The enforceability of a rule of law is what distinguishes it from other kinds of rules which are largely unenforceable, like rules of custom, etiquette, or morality.

In Singapore, sovereignty belongs to the State. Various parts of the state's apparatus are involved in making, interpreting, and enforcing the law. Parliament makes laws, the courts interpret and apply the laws, and the police (and other agencies) enforce the law. We will return to this topic in a subsequent Explainer.

Law as a system of principles

I said earlier that, sometimes, there are no right answers in law. This is immensely frustrating to us as Singaporeans, dutifully trained on model answers and 10-year series. But it is true — in law, the *reasoning* is often more important than the *outcome*.

When people are asked what the law is, they often say it is a collection of rules. This is understandable, but again, mistaken. Rules are an *expression* of the law, but they do not make up the whole of the law.

Think about the game of chess. In chess, there are a finite number of rules, and those rules describe the entire reality of the game. Since there are a finite number of rules in chess, there are also a finite number of possibilities in the game (although this number is very large, due to

the many ways in which the pieces can interact). If it is not in the rules of chess, then it is simply not possible in chess. (You can, of course, ignore the rules and do whatever you like with the pieces, but then, by definition, you are no longer playing chess. Anyone who has tried to teach chess to a toddler will know what I mean.)

Law is not like chess. There are a finite number of rules of law, but such rules do not define the set of possible interactions in real life. Real life has (for practical purposes) an infinite set of possibilities. The real world has too many unknowns and is too complex in the way that various factors interact, for any person or group of people to come up with a collection of rules that covers everything. Further, the real world evolves, and new laws need to be made to deal with, among other things, technological developments.

The law is instead a system of *principles*. The rules are expressions of those principles, and the principles may, if not expressly stated, be inferred from the body of rules. Even if there is no express rule to deal with a given situation, we can figure out what we *ought* to do by reasoning from the principle.

Consider this hypothetical example: there is a rule that states, "No vehicles allowed in the park". This seems straightforward enough — we can tell, for example, that you should not drive your car in the park.

But it takes only a little thinking to understand how the rule is not really clear or comprehensive. What, exactly, is "the park"? Does it include the drop-off point at the entrance? Or the carpark?

A little common sense shows us that the definition of "park" should not extend to these places. The *reason* behind the rule "no vehicles allowed in the park" is, presumably, that the park is an area where pedestrians will be present and vehicles could be dangerous to them. It is an area where pedestrians would not expect vehicles and would not take special precautions against such danger. This is the *principle* by which we need to interpret and apply the rule.

In contrast, the drop-off point and carpark are built specifically for vehicles, and pedestrians would be well-aware of the danger there. Indeed, the whole point of the drop-off point and carpark is to facilitate vehicular access to the park. Therefore, it would be non-sensical to include those areas in the definition of "the park".

What about the term, “vehicle”? A car, a truck, or a motorcycle would presumably fall within that category. But what about a bicycle, a kick scooter, or a skateboard? Again, we interpret the rule by reference to the *principle*– if the rule exists to prevent danger to pedestrians, we define “vehicle” in a way that it includes such vehicles that are dangerous to pedestrians but excludes things that are not dangerous. Therefore, bicycles, kick scooters, and skateboards should be allowed in the park. Note an important point here — legal terms are defined relative to the *purpose* of the particular law. A given word may have a legal meaning that is distinct from its ordinary language meaning.

Now, what about autonomous drones? When the law was enacted, drones did not exist. There is no rule that explicitly deals with them. So, should drones be allowed in the park? Well, if the principle is that we try to protect pedestrians in the park, then we have to ask whether drones are a danger to such pedestrians in the same way as vehicles are. If they are, then they, like vehicles, ought to be banned from the park. If they are not, then like bicycles, they ought to be allowed in the park.

Note that all of this is a matter of *argument* and *interpretation*. It is entirely possible for reasonable people to reasonably disagree. That is why in law, it is the *reasoning* that matters more than the outcome. Law is prescriptive, not descriptive. It is about what we *should do*, not about *the way things are*. That is why it is often difficult (or impossible) to definitively show what the “right” answer in law is. That is not to say that there is *no*right or wrong in law (there is, and people can, and do, get the law wrong), only that the process of reasoning is often as important (or more important) that the conclusion at the end of that reasoning. To borrow a phrase from Primary school mathematics teachers — “You need to show your working!”

Conclusion

If you made it this far, congratulations! Unfortunately, everything we’ve covered here is just groundwork.

By law, we mean man-made laws made by a sovereign. Importantly, those laws are enforceable — if you break them, someone will come along to force you to comply with them or to punish you.

Law is often expressed as rules, but rules are not the entirety of the law. More important are the principles that are the basis of those rules. Rules can’t cover everything — in situations

where the rules are ambiguous or incomplete, we interpret or supplement them by reference to the underlying principles.

This means that in law, reasoning is important. The laws of man, unlike the laws of nature, are not immutable. A law with no good reason behind it is a bad law, and it can (and should) be changed.

The next Explainer in this series will cover the concept of legal systems, and will show how laws are made, interpreted and applied.

Alexander Woon
Lecturer
School of Law
Singapore University of Social Sciences