

## FOOTPATH WARRIORS: A PROPOSED SENTENCING FRAMEWORK FOR PERSONAL MOBILITY DEVICE ACCIDENTS

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### I. INTRODUCTION

The use of personal mobility devices [PMDs] on footpaths in Singapore has led to numerous PMD-related accidents,<sup>1</sup> some of which have resulted in grave injuries to the victims.<sup>2</sup> The propensity for PMDs to cause harm is well known by the public – there have been numerous calls to tighten legislative controls on PMD usage, including a request to completely ban PMD usage on footpaths.<sup>3</sup>

These calls have not gone unanswered, and Parliament has been consistently tightening legislative controls over PMD usage over the past year. The passing of the Active Mobility Act 2017<sup>4</sup> [AMA] added s 5A to the Road Traffic Act<sup>5</sup>, which expressly prohibits the use of PMDs on public roads in most circumstances. Following the AMA, the Active Mobility Regulations 2018<sup>6</sup> introduced additional controls over, *inter alia*, the sale and modification of PMDs.

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<sup>1</sup> Adrian Lim, “Parliament: About three accidents a week involving personal mobility device users” (8 January 2018), *The Straits Times*, online: <[www.straitstimes.com/politics/parliament-average-of-three-accidents-a-month-involving-pedestrians-and-personal-mobility](http://www.straitstimes.com/politics/parliament-average-of-three-accidents-a-month-involving-pedestrians-and-personal-mobility)>.

<sup>2</sup> Shaffiq Idris Alkhatib, “Teen e-scooter rider pleads guilty in incident which caused pedestrian severe brain injuries” (13 June 2018), *The Straits Times*, online: <[www.straitstimes.com/singapore/courts-crime/teen-e-scooter-rider-pleads-guilty-in-incident-which-caused-pedestrian-severe](http://www.straitstimes.com/singapore/courts-crime/teen-e-scooter-rider-pleads-guilty-in-incident-which-caused-pedestrian-severe)>.

<sup>3</sup> Desmond Ng & Kan Lau, “Why being hit by an e-scooter can be deadly – and a call to ban them from footpaths” (20 May 2018), *Channel NewsAsia*, online: <[www.channelnewsasia.com/news/cnainsider/e-scooter-ban-footpaths-accidents-safety-registration-debate-10250946](http://www.channelnewsasia.com/news/cnainsider/e-scooter-ban-footpaths-accidents-safety-registration-debate-10250946)>.

<sup>4</sup> No 3 of 2017, Sing.

<sup>5</sup> Cap 276, 2004 Rev Ed Sing.

<sup>6</sup> S 251/2018 Sing.

While these legislative controls are relatively new, and their effectiveness cannot be conclusively determined, it unfortunately appears that the measures in place are still insufficient – calls for the complete banning of PMDs have not ceased.<sup>7</sup> To supplement the legislative measures already in place, the courts may step in to pass sentence on PMD users who cause hurt to pedestrians, and in doing so, deter such careless behaviour enough to lower the incidence of PMD accidents.

## II. SCOPE AND PURPOSE OF THE ARTICLE

This article proposes a sentencing framework for PMD accident cases where grievous hurt is caused, by reconciling the unique characteristics of PMD accident cases with the sentencing framework for causing grievous hurt by a negligent act that endangers human life under s 338(b) of the Penal Code<sup>8</sup> [PC] in *Tang Ling Lee v Public Prosecutor*<sup>9</sup> [*Tang Ling Lee*]. The offence of causing grievous hurt by a negligent act that endangers human life is chosen as a benchmark, as most reported PMD accidents would likely fall under this provision.<sup>10</sup>

## III. THE *TANG LING LEE* FRAMEWORK

In *Tang Ling Lee*, See Kee Oon J laid down a general sentencing framework to be applied for road traffic cases charged under s 338(b) of the PC when the accused claims trial (referred to in this article as the ‘*Tang Ling Lee* framework’).<sup>11</sup> The *Tang Ling Lee* framework is a two-step inquiry, which first categorises the offence under one of three pre-established categories to determine a starting point sentence (referred to in this article as the ‘three-category approach’). Following which, the framework allows further adjustments to be made to take into account the relevant mitigating and aggravating factors (referred to in this article as the ‘adjustments step’).<sup>12</sup>

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<sup>7</sup> Rodney Tan, “It Is Time to Ban E-Scooter[s] in Singapore” (last updated 11 December 2018), *ipetitions*, online: <[www.ipetitions.com/petition/it-is-time-to-ban-e-scooter-in-singapore](http://www.ipetitions.com/petition/it-is-time-to-ban-e-scooter-in-singapore)>.

<sup>8</sup> Cap 224, 2008 Rev Ed Sing.

<sup>9</sup> [2018] SGHC 18; [2018] 4 SLR 813.

<sup>10</sup> For example, see *supra*, notes 1-3.

<sup>11</sup> *Supra* note 9 at [32].

<sup>12</sup> *Ibid.*

At the first step of the inquiry, a presumptive sentencing range will be determined as a starting-point sentence, having regard to the twin considerations of harm and culpability.<sup>13</sup> See Kee Oon J summarised the three-category approach in the following table format:<sup>14</sup>

<b>Category</b>	<b>Circumstances</b>	<b>Presumptive Sentencing Range</b>
1	Lesser harm and lower culpability	Fines
2	Greater harm and lower culpability Or Lesser harm and higher culpability	One to two weeks' imprisonment
3	Greater harm and higher culpability	More than two weeks' imprisonment

See Kee Oon J defined “harm” as the “nature and degree of the grievous bodily injury caused to the victim(s)”<sup>15</sup>, and the “degree of culpability” as “the degree of relative blameworthiness disclosed by an offender’s actions ... measured chiefly in relation to the extent and manner of the offender’s involvement in the criminal act”.<sup>16</sup> Additionally, the factors which would affect the “culpability” limb under the three-category approach would include: (i) the manner of driving, (ii) the circumstances which might have increased the danger to road users, and (iii) the offender’s reasons for driving.<sup>17</sup>

#### IV. THE *TANG LING LEE* FRAMEWORK ADJUSTED FOR PMD ACCIDENTS

While the *Tang Ling Lee* framework was caveated to only apply to road traffic cases,<sup>18</sup> it has been adjusted to apply in non-road traffic cases as well. Most notably, the District Judge in *Public Prosecutor v Cai Mei Ying*<sup>19</sup> [*Cai Mei Ying*] applied the three-category approach under the *Tang Ling*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid* at [31].

<sup>15</sup> *Ibid* at [25].

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid* at [27].

<sup>18</sup> *Ibid* at [24].

<sup>19</sup> [2018] SGMC 56.

*Lee* framework for a s 338(b) case involving a bicycle accident, but held that the presumptive sentencing ranges were not binding due to the different contexts in which the cases occurred.<sup>20</sup>

It is submitted that when a PMD accident case charged under s 338(b) of the PC reaches the courts, there would be no practical reason to deviate from the approach taken by the District Judge in *Cai Mei Ying*. Moreover, the District Judge in *Cai Mei Ying* noted that the *Tang Ling Lee* framework was expressly caveated to only apply to road traffic cases, but recognised that the parties had agreed that “because *Tang Ling Lee* involves the co-existence of vehicles and humans in shared spaces”, the framework was applicable to their case.<sup>21</sup> PMD accidents also involve the “co-existence of vehicles and humans in shared spaces”, and it would follow that the approach taken in a future case involving a PMD accident is likely to be similar to the approach taken by the District Judge in *Cai Mei Ying*.

It would then be apposite to consider what adjustments might be made to the *Tang Ling Lee* framework for PMD accident cases, and it is argued that the main considerations for adjusting the *Tang Ling Lee* framework in these cases would be: (i) the lower propensity for PMDs to cause harm when compared to motor vehicles (referred to in this article as the ‘harm factor’), and (ii) the objective of general deterrence (referred to in this article as the ‘deterrence factor’). If the courts were to follow the approach in *Cai Mei Ying* for adjusting the *Tang Ling Lee* framework, they would apply the three-category approach without using the presumptive sentencing ranges, and then account for the above two considerations at the adjustments step of the *Tang Ling Lee* framework. These two considerations will now be dealt with in turn.

#### *A. Downward adjustments for the ‘harm factor’*

PMDs have a lower propensity to cause harm than motor vehicles, as they travel at lower speeds and are not as heavy as motor vehicles. This could warrant a downward adjustment of the starting-point sentence at the adjustments step of the *Tang Ling Lee* framework.

As discussed above, the approach in *Cai Mei Ying* ought to be the first port-of-call for the discussion. However, the District Judge in *Cai Mei Ying* did not make a clear finding on the effect of the ‘harm factor’, though it was noted that as a guiding principle, “drivers of heavy vehicles

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<sup>20</sup> *Ibid* at [23].

<sup>21</sup> *Ibid* at [20].

stand to receive heavier punishments than riders of light vehicles due to the greater damage their vehicles can cause”.<sup>22</sup>

It is then helpful to consider the approach taken in *Public Prosecutor v Khairul bin Hairuman*<sup>23</sup> [*Khairul*], which was a case involving a fatal bicycle accident. The accused in *Khairul* was charged under the rashness limb of s 304A of the PC, and the District Judge applied the three-category approach from the case of *Public Prosecutor v Ganesan Sivasankar*<sup>24</sup> [*Ganesan*], including the presumptive sentencing ranges.

The *Ganesan* framework was also laid down by See Kee Oon J to apply to any s 304A rashness case when the accused claims trial, and it uses a three-category approach followed by an adjustments stage as with the *Tang Ling Lee* framework.<sup>25</sup> The only differences between the two frameworks are that the *Ganesan* framework does not consider the harm caused (as it is, by definition of the offence, the death of the victim),<sup>26</sup> and that the presumptive sentencing ranges in *Ganesan* under the three-category approach are more severe. The table laid out by See Kee Oon J in *Ganesan* is illustrative of these differences:<sup>27</sup>

Category	Accused’s culpability	Presumptive sentencing range
1	Low	3 to 5 months’ imprisonment
2	Moderate	6 to 12 months’ imprisonment
3	High	More than 12 months’ imprisonment

The District Judge in *Khairul* found that the accused’s conduct fell within Category 2 of the *Ganesan* framework, and then discounted the accused’s sentence at the adjustments stage to “reflect the lower consciousness of risk of harm towards others associated with the riding of the bicycle in comparison with the riding or driving of motorised vehicles”.<sup>28</sup>

The approach in *Khairul* would support the position that the lower propensity for PMDs to cause harm could count for a significant downward adjustment at the adjustments stage of the *Tang Ling Lee* framework.

<sup>22</sup> *Ibid* at [24].

<sup>23</sup> [2018] SGM 16.

<sup>24</sup> [2017] SGHC 176; [2017] 5 SLR 681.

<sup>25</sup> *Ibid* at [54].

<sup>26</sup> *Ibid*.

<sup>27</sup> *Ibid* at [55].

<sup>28</sup> *Supra* note 23 at [38].

*B. Upward adjustments for the ‘deterrence factor’*

As discussed in the introduction of this article, PMD usage is an issue of great public concern in Singapore, and deterrent sentencing in the courts would be an appropriate supplement for the legislative controls already in place. Therefore, the court may be inclined to make an upward adjustment of the starting-point sentence for the purpose of general deterrence.

In *Cai Mei Ying*, the ‘deterrence factor’ was effectively the only aggravating factor taken into consideration at the adjustments stage of the *Tang Ling Lee* framework.<sup>29</sup> Interestingly, the District Judge was cognisant of the issue of PMD accidents, classifying both cyclists and PMD users within the same class of persons and commenting that “with the increased popularity of PMDs and the use of bicycles ... all cyclists and users of PMDs must be reminded to take extra care when they are in shared spaces”.<sup>30</sup> Therefore, it is likely that the court would take the ‘deterrence factor’ as a significant aggravating factor at the adjustments stage of the *Tang Ling Lee* framework.

Additionally, a common thread that binds most cases charged under s 338(b) of the PC is that the accused person had breached certain safety regulations which led to the accident – the accused in *Cai Mei Ying* was cycling in a no-cycling zone<sup>31</sup> and the accused in *Tang Ling Lee* failed to give way to a motorist with the right of way<sup>32</sup>. The breach of safety regulations counted towards a finding of higher culpability at the three-category approach stage, ultimately leading to a higher starting-point sentence. Therefore, it could be argued that the purpose of general deterrence is served indirectly at the “culpability” limb of the three-category approach.

## V. CONCLUSION

To summarise the proposed method for adjusting the *Tang Ling Lee* framework for PMD accident cases charged under s 338(b) of the PC, the courts are likely to apply the three-category approach without using the presumptive sentencing ranges to determine a starting-point sentence. Following which, at the adjustments stage, the court would account for the ‘harm factor’ to adjust the starting-

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<sup>29</sup> *Supra* note 19 at [37].

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid* at [2].

<sup>32</sup> *Supra* note 9 at [5].

point sentence downwards and the ‘deterrence factor’ to adjust the starting-point sentence upwards.

For PMD users, who would bear the full brunt of this proposed method, the message is clear – if ever placed in an unfortunate s 338(b) situation where the harm has already been caused, it would be in their best interest to render as much assistance to the victim as necessary and comply with all orders, for a possible finding of lower culpability.