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

[2024] SGHC 129

Magistrate's Appeal No 9263 of 2021

Between

Chen Song

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9113 of 2022

Between

Chua Ting Fong (Cai Tingfeng)

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9150 of 2022

Between

Lim Eng Ann

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9204 of 2022

Between

Erh Zhi Huang, Alvan

… *Appellant*

And

Public Prosecutor

… *Respondent*

Magistrate's Appeal No 9243 of 2022

Between

Mohd Raman bin Daud

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing — Sentencing framework — Road Traffic Act — Sections 65(3)(*a*) and 65(4)(*a*)]

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Chen Song
v
Public Prosecutor and other appeals

[2024] SGHC 129

General Division of the High Court — Magistrate's Appeal Nos 9263 of 2021, 9113, 9150, 9204 and 9243 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Vincent Hoong J
18 July, 8 August 2023

14 May 2024 Judgment reserved.

Vincent Hoong J (delivering the judgment of the court):

Introduction

1 In 2019, Parliament significantly amended the provisions in relation to the offences of careless driving and dangerous driving in the Road Traffic Act (Cap 276, 2004 Rev Ed) ("previous RTA"). These amendments introduced a new scheme of enhanced penalties based on a tiered harm structure, further differentiated by the type of offender involved (*ie*, whether the offender is a first-time offender, repeat offender, serious offender or serious repeat offender as defined by the Road Traffic Act 1961 (2020 Rev Ed) ("present RTA"). The unique architecture of the RTA poses new challenges to the way such offences have traditionally been prosecuted and punished under the previous RTA and the Penal Code 1871 (2020 Rev Ed) ("Penal Code"). For ease of discussion, we

will refer to the previous RTA and the present RTA collectively as the RTA unless it is necessary to draw a distinction between them.

2 In the five appeals before us, the appellants were convicted of careless driving offences punishable under the grievous hurt or hurt provisions in the RTA. The appellants in HC/MA 9263/2021/01 ("MA 9263"), HC/MA 9113/2022/01 ("MA 9113"), HC/MA 9150/2022/01 ("MA 9150") and HC/MA 9243/2022/01 ("MA 9243") were each charged with an offence of driving without due care and attention or without reasonable consideration causing hurt under ss 65(1)(*a*) and 65(1)(*b*) respectively, punishable under s 65(4)(*a*) of the RTA. The appellant in HC/MA 9204/2022/01 ("MA 9204") was charged with an offence of driving without due care and attention causing grievous hurt under s 65(1)(*a*) punishable under s 65(3)(*a*) of the RTA.

3 In *Sue Zhang (Xu Zheng) v Public Prosecutor* [2023] 3 SLR 440 ("*Sue Chang*"), this court previously set out a sentencing framework for careless driving offences causing grievous hurt under s 65(3)(*a*) of the RTA based on the two-stage, five-step sentencing framework (the "*Logachev*-hybrid approach") in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*"). However, a sentencing framework for careless driving offences causing hurt *simpliciter* under s 65(4)(*a*) of the RTA has yet to be promulgated.

4 What emerges from the survey of the five appeals before us is the absence of a unified approach guiding the lower courts in determining the appropriate sentence for careless driving offences punishable under ss 65(3)(*a*) and 65(4)(*a*) of the RTA. While the *Sue Chang* framework is now the prevailing sentencing framework for careless driving offences causing grievous hurt punishable under s 65(3)(*a*) of the RTA, it is unclear how this framework should affect sentencing for careless driving offences causing hurt punishable under

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s 65(4)(*a*) of the RTA; it is also unclear how the framework coheres with the structure of the RTA more broadly. In MA 9204, the lower court was bound to apply the *Sue Chang* framework given that the appellant was convicted on a charge of careless driving causing grievous hurt. In MA 9243 and MA 9150, the lower courts adapted the *Sue Chang* framework and applied it in the context of their careless driving causing hurt charges. In MA 9263, the lower court applied the sentencing framework adopted by the District Court in *Public Prosecutor* v *Cullen Richard Alexander* [2020] SGDC 88. Finally, in MA 9113, the lower court adapted the sentencing framework set out in *Wu Zhi Yong v Public Prosecutor* [2022] 4 SLR 587 ("*Wu Zhi Yong*"). This divergence in sentencing approaches is wholly undesirable and antithetical to the goals of consistency and certainty.

5 The consolidated hearing of these appeals thus presents an opportunity for us to consider these provisions collectively and to provide guidance on the applicable sentencing approach to be adopted for these offences. Given the scope of these appeals, we appointed Mr Yong Yi Xiang ("Mr Yong") as young independent counsel to assist us with determining the appropriate sentencing frameworks for ss 65(3)(*a*) and 65(4)(*a*) of the RTA.

6 Prior to the hearing of the appeals, we directed the parties and Mr Yong to consider the following questions:

(a) Whether the sentencing framework laid down in *Sue Chang* for offences punishable under s 65(3)(*a*) of the RTA should be affirmed and whether it can and should be adapted for offences punishable under s 65(4)(*a*) of the RTA.

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(b) Given the legislative scheme under s 65 of the RTA, where the prescribed penalty is dependent on the harm caused by the offence, what should the court's approach be in cases where the offence causes grievous hurt to the victim, but the offender is charged with and convicted of an offence for causing simple hurt under s 65(4)(*a*) of the RTA?

7 At the hearing on 18 July 2023, a key question that arose was whether the levels of harm as reflected in the punishment provisions were discrete or non-discrete categories of harm. In particular, we queried whether the category of "hurt" in s 65(4) of the RTA was definitionally wide enough to cover instances where grievous hurt has been caused. We therefore directed that the parties and Mr Yong address us on the following additional issues:

(a) What is the meaning of "hurt" in s 65(4) of the RTA?

(b) If "hurt" in s 65(4) of the RTA means any physical injury other than grievous hurt and death (*ie*, that the categories of harm are discrete), what are the appropriate sentencing frameworks for ss 65(3) and 65(4) of the RTA?

8 As we shall see, it is the answers to these key issues which form the backbone of our decision on the appropriate sentencing framework to be adopted for ss 65(3)(*a*) and 65(4)(*a*) of the RTA.

Background to the appeals

9 We begin by setting out the facts and the decisions reached by the lower court in each respective appeal.

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Background to Chen's appeal in MA 9263

10 The appellant in MA 9263 is Mr Chen Song ("Chen"). On 28 December 2020, at about 10.40am, Chen was driving a motor car along Seletar North Link towards the direction of Seletar West Link. He failed to give way to oncoming traffic with the right of way when executing a right turn at a non-signalised T-junction near a construction site. This resulted in a collision with the victim who was riding a motorcycle. Chen admitted to having seen the victim riding towards him from a distance of about 200 to 300m away before he executed the right turn. At the time of the accident, the weather was clear, road surface was dry, the visibility was clear, and the traffic flow was light.

11 As a result of the accident, the victim was conveyed to the Khoo Teck Puat Hospital ("KTPH") and warded for a period of 14 days. The victim also received 45 days of hospitalisation leave (inclusive of the period of hospitalisation) from 28 December 2020 to 11 February 2021. The medical report from KTPH dated 24 February 2021 stated that the victim suffered the following injuries:[1]

> (a) Extensive mesenteric injury in the right lower quadrant and haematoma along the entire mesenteric root, associated with moderate haemoperitoneum and small right retroperitoneal haematoma. Intraoperative findings revealed a large tear in the ileal mesentery with active bleeding from two arterial branches and associated moderate haematoma, with a separate mesenteric contusion and small haematoma at zone I in lesser sac. Post-operative recovery was complicated by: (i) post-operative ileus (*ie*, obstruction of the intestine which necessitated

[1] Record of Appeal for HC/MA 9263/2021 ("MA 9263 ROA") at pp 85–87.

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the insertion of a nasal tube); (ii) left-sided pneumonia, requiring him to be placed on oxygen support; and (iii) surgical-site wound infection. This injury resulted in surgical procedures which included the removal of parts of the victim's small and large intestines.

(b) A right acromioclavicular joint dislocation, for which he underwent interval elective right acromioclavicular joint stabilisation.

(c) A left wrist contusion.

12 The front portion of the victim's motorcycle was completely crushed. The top left portion of the front windscreen of Chen's motor car was shattered and scratched. The front left passenger door had scratches, dents and was crumpled all the way down to the skirting. The left side mirror of the motor car was broken. The rear left portion of the motor car was also scratched and dented.

13 Chen was charged with one count of driving without reasonable consideration causing hurt under s 65(1)(*b*) punishable under s 65(4)(*a*) of the RTA. He pleaded guilty to the charge and was convicted accordingly. The Prosecution sought an imprisonment term of at least 6 weeks and a disqualification order of 18 months. The defence argued instead that the custodial threshold had not been crossed and urged the court to impose a high fine and a disqualification order of no more than 10 months. The district judge's grounds of decision can be found in *Public Prosecutor v Chen Song* [2021] SGDC 277 ("*Chen Song GD*").[2]

14 Chen was sentenced to 3 weeks' imprisonment and 16 months' disqualification from holding or obtaining all classes of driving licence

[2] MA 9263 ROA at pp 58–84.

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("DQAC") from the date of his release. The court held that the custodial threshold had been crossed (*Chen Song GD* at [29]). Chen's culpability was found to be low as there were no additional culpability-enhancing factors such as speeding, drink-driving, *etc*. Further, in determining the level of harm suffered, the court took into account the injuries as set out at [11] above (*Chen Song GD* at [35]–[40]). The court considered that the victim was given 45 days of hospitalisation leave from the date of the accident, which was a fairly lengthy period. Within that period, he was warded in hospital for 14 days. There was also extensive damage caused to both vehicles, in particular, the victim's motorcycle.

15 In arriving at the final sentence, the court also took into account Chen's timeous plea of guilt, the fact that he was a first-time offender, his co-operation with the authorities and his genuine remorse (*Chen Song GD* at [61]).

Background to Chua's appeal in MA 9113

16 The appellant in MA 9113 is Mr Chua Ting Fong ("Chua"). On 5 November 2020, at about 6.30pm, Chua was driving his motor car along the Pan Island Expressway ("PIE") towards Tuas near the 28.5km mark. He failed to keep a proper lookout while changing from lane 2 to lane 1 and collided into the victim who was riding a motorcycle on lane 1. At the time of the accident, the weather was fine, the road surface was dry, the visibility was good, and the traffic volume was heavy. Chua's in-car camera only captured him changing lanes and the victim's location prior to the collision. The in-car camera failed to capture the collision.

17 As a result of the accident, the victim was conveyed to the National University Hospital ("NUH") by ambulance. The victim was warded in the

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surgical high dependency unit from 5 to 16 November 2020 (11 days) before being discharged with 41 days of hospitalisation leave. The medical reports from NUH stated that the victim sustained the following injuries which were treated conservatively:[3]

(a) Traumatic brain injury in the form of a subarachnoid haemorrhage and extradural hematoma.

(b) Left-sided facial fractures (minimally displaced) with fractures seen involving left orbital lateral wall and floor (with orbital extraconal haematoma), left maxillary sinus lateral wall and left frontal sinus outer table. These fractures were also associated with left eye indirect traumatic optic neuropathy, subconjunctival haemorrhage and commotio retina.

(c) Left eyebrow stellate laceration and multiple superficial facial abrasions. In respect of these injuries, the victim underwent wound debridement and toilet and suture of the left eyebrow laceration and scrub down of the facial abrasions.

(d) Multiple superficial abrasions over the left shoulder, chest wall, right hand dorsum, fingers, bilateral knees, left big toe, and second toe.

(e) Two enamel-dentine fractures to the teeth.

18 The victim's motorcycle sustained scratches and was dented on the left front mudguard and left handlebar. Chua's motorcar sustained scratches on the right rear portion.

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[3] Record of Appeal for HC/MA 9113/2022 ("MA 9113 ROA") at pp 65–66.

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19 Chua was charged with one count of driving without due care and attention causing hurt under s 65(1)(*a*) punishable under s 65(4)(*a*) of the RTA. He pleaded guilty to the charge and was convicted accordingly. The Prosecution sought an imprisonment term of at least 4 weeks and a disqualification order of 3 years. The Defence sought instead no more than two weeks' imprisonment and disqualification for a period of less than 12 months. The district judge's grounds of decision can be found in *Public Prosecutor v Chua Ting Fong (Cai Tingfeng)* [2022] SGDC 139 ("*Chua Ting Fong GD*").[4]

20 Chua was sentenced to 4 weeks' imprisonment and 3 years' DQAC from the date of his release. In arriving at the appropriate sentence to impose, the district judge was guided by the "sentencing bands" approach in *Wu Zhi Yong* for offences under s 64(1) punishable under s 64(2C)(*a*) read with s 64(2C)(*c*) of the RTA (*Chua Ting Fong GD* at [36]–[37]). The district judge calibrated the sentencing bands in *Wu Zhi Yong* downwards to account for the range of sentences for offences under s 65(1)(*a*) punishable under s 65(4)(*a*) of the RTA.

21 On the facts of the present case, the district judge found that Chua's culpability was on the higher end of low as he had failed to check his blind spots for oncoming traffic before changing lanes along an expressway. He had also failed to ensure that there was a safe distance between his motor car and the other passing traffic before changing lanes (*Chua Ting Fong GD* at [48]–[49]). The district judge also found that the harm caused fell on the lower end of serious harm. This was so given that the victim had suffered traumatic brain injury, which was an injury to a vulnerable part of the body. He had also sustained fractures to his face, injuries affecting the left eye area, two enamel-dentine fractures and abrasions on other parts of his body. He had to be closely

[4] MA 9113 ROA at pp 41–64.

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monitored in the high dependency unit for 11 days and was given 41 days of hospitalisation leave (inclusive of the period of hospitalisation) (*Chua Ting Fong GD* at [50] and [52]). The court also considered that the potential harm in the present case was serious as the offence was committed during heavy evening traffic along a major expressway with a speed limit of 90km/h (*Chua Ting Fong GD* at [54]).

22 The district judge was of the view that the present case fell within the middle band of the re-calibrated *Wu Zhi Yong* sentencing framework. This band was appropriate for offences involving a higher level of seriousness with more than one offence-specific aggravating factor present and where the offender's culpability falling typically in the medium range. The sentencing range for this band was between 1 to 6 months' imprisonment and disqualification for a period of between 12 to 14 months. The district judge was of the view that the starting point for Chua's case should be slightly above the lowest end of this band, *ie*, a starting point of 2 months' imprisonment. Taking into account the offender-specific factors, including the fact that Chua was untraced, pleaded guilty, assisted with the investigations, and provided a written apology and $5,000 as voluntary compensation to the victim, the court held that the appropriate custodial sentence was 4 weeks' imprisonment (*Chua Ting Fong GD* at [56] and [57]). As for the period of disqualification, she was of the view that an upward calibration to 3 years from the indicative range set out in the framework above was warranted, as it was in the public's interest to remove such a driver from the roads for a substantial period of time (*Chua Ting Fong GD* at [58]).

Background to Lim's appeal in MA 9150

23 The appellant in MA 9150 is Mr Lim Eng Ann ("Lim"). On 8 July 2020, at about 3.02pm, Lim was driving a motor taxi out from a car park in the vicinity

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of Yishun Ring Road. As Lim exited the carpark, he stopped at the stop line. Lim proceeded to execute a right turn while the victim crossed the road from Lim's right to left. The victim had been standing in the middle of the road in Lim's direct line of sight for about 25 seconds prior to the collision. He failed to keep a proper lookout ahead and his motor taxi collided into the victim along Yishun Ring Road towards Yishun Avenue 2 Lamppost 4F. The impact caused the victim's head and body to hit the bonnet of Lim's motor taxi before the victim fell to the ground. At the time of the accident, it was raining, the road surface was wet, visibility was clear, and the traffic volume was light. The in-car camera in Lim's motor taxi captured the accident.

24 The victim was conveyed to KTPH by ambulance. On examination, the victim suffered from significant left hip pain and was unable to access his right hip range of motion. He had some mild tenderness over his left femur shaft, and he was unable to access his left knee range of motion due to hip pain. He was diagnosed with a left hip intertrochanteric fracture and left knee tibia plateau fracture. He underwent surgical fixation of his left hip on 11 July 2020 and surgical fixation of his left proximal tibia on 15 July 2020. The victim was warded for 15 days from 8 to 23 July 2020 in KTPH. He was subsequently transferred to Yishun Community Hospital and warded for 29 days before being discharged on 21 August 2020. He was given 210 days of medical leave from 8 July 2020 to 3 February 2021 (inclusive of the period of hospitalisation). No visible damage was found on Lim's motor taxi.

25 Lim was charged with one count of driving without due care and attention under s 65(1)(*a*) punishable under s 65(4)(*a*) of the RTA. He pleaded guilty to the charge and was convicted accordingly. The Prosecution sought a fine of at least $2,500 and a disqualification order of 18 months. The Defence sought instead a fine of $1,500 and a disqualification period of less than

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12 months. The district judge's grounds of decision can be found in *Public Prosecutor v Lim Eng Ann* [2022] SGDC 212 ("*Lim Eng Ann GD*").[5]

26 The court sentenced Lim to a fine of $2,000 and 15 months' DQAC from the date of his release (*Lim Eng Ann GD* at [55]). In arriving at the appropriate sentence to impose, the court was guided by the sentencing framework set out in *Sue Chang* for offences under s 65(1) punishable under s 65(3)(*a*) of the RTA (*Lim Eng Ann GD* at [39]).

27 At the first step, the court found that the harm caused was in the moderate range in view of the two types of fractures suffered by the victim, the surgical fixation he underwent, and the length of his hospitalisation and medical leave. As for Lim's culpability, the district judge agreed with the Prosecution and the Defence that it was low as the accident occurred out of a momentary lapse of attention when he failed to keep a proper lookout ahead and collided into the victim as he executed a right turn (*Lim Eng Ann GD* at [42]).

28 At the second step, the court was of the view that the custodial threshold had not been crossed, although the fine imposed should be on the upper range provided for under s 65(4)(*a*) of the RTA (*Lim Eng Ann GD* at [43]). At the third step, the district judge held that the appropriate starting point should be the maximum fine of $2,500. At the fourth step, the district judge calibrated the quantum of the fine downwards to $2,000, taking into account Lim's plea of guilt, lack of antecedents, co-operation with authorities and assistance to the victim.

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5 Record of Appeal for HC/MA 9150/2022 ("MA 9150 ROA") at pp 28–51.

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29 Finally, the district judge imposed a disqualification order of 18 months as it was within the public's interest to remove Lim as a driver from the roads for a substantial period of time (*Lim Eng Ann GD* at [51]–[54]).

Background to Raman's appeal in MA 9243

30 The appellant in MA 9243 is Mr Mohd Raman Bin Daud ("Raman"). On 9 December 2021, at or about 2.57pm, Raman was driving his motor car out of a multi-storey car park near Block 34A Bedok South Avenue 2 towards Bedok South Avenue 2. Raman failed to stop at the stop line of the exit of the car park, and did not keep a proper lookout for oncoming traffic before making a left turn towards Bedok South Avenue 2. There was nothing obstructing Raman's view in front of him and the victim was clearly visible cycling along Bedok South Avenue 2 across the breadth of Raman's car from his right to his left for about 4 seconds. His motor car collided with the victim who fell off his bicycle and onto the road. Raman's motor car ran over the victim's bicycle. He stopped his motor car, attended to the victim and called the police for assistance. At the time of the accident, the weather was fine, the road surface was dry, and the traffic volume was light. Raman's in-car cameras captured the accident.

31 The victim was conveyed to Changi General Hospital ("CGH") by ambulance. The medical report from CGH dated 8 February 2022 ("CGH Medical Report") stated that the victim sustained a left distal tibia fibula open fracture and a right index finger proximal interphalangeal joint laceration with tendon exposure as a result of the accident. The victim underwent debridement and surgical fixation of the left tibia fibula open fracture and debridement of the right index finger on 9 December 2021. The victim was warded at CGH for 12 days, from 9 to 21 December 2021. He was transferred to Saint Andrew's Community Hospital on 21 December 2021, and was subsequently discharged

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on 20 January 2022 (*ie*, he was warded for 42 days). The victim underwent physiotherapy and occupational therapy. The CGH Medical Report stated that the surgical wounds sustained by the victim had healed and the fracture was healing well. As of 28 November 2022, the victim still suffered from pain in his leg and was due to attend a follow up appointment scheduled on 15 December 2022.

32 The victim's bicycle sustained significant damage, with its right handlebar being ripped off and its front wheel twisted.

33 Raman was charged with one count of driving without due care and attention causing hurt under s 65(1)(*a*) punishable under s 65(4)(*a*) of the RTA. He pleaded guilty to the charge and was convicted accordingly. The Prosecution sought a sentence of at least 4 weeks' imprisonment and 18 months' DQAC. The Defence argued that the maximum fine and the shortest period of disqualification should be imposed.

34 The court sentenced Raman to 4 weeks' imprisonment and 18 months' DQAC from the date of his release. In arriving at this sentence, the district judge applied the sentencing framework set out in *Sue Chang*. The district judge's grounds of decision can be found in *Public Prosecutor v Mohd Raman bin Daud* [2022] SGDC 296 ("*Mohd Raman bin Daud GD"*).[6]

35 At the first step of the *Sue Chang* framework, the court found that the harm caused was within the moderate range given the extent of the victim's injuries and his substantial period of hospitalisation (*Mohd Raman bin Daud GD* at [40]). As for Raman's culpability, the court found that it was at the higher

6 Record of Appeal for HC/MA 9243/2022 ("MA 9243 ROA") at pp 30–55.

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end of the low category as he had failed to stop at the stop line to check for oncoming traffic before executing a left turn onto the main road (*Mohd Raman bin Daud GD* at [41]). At the second step, the court found that the indicative sentence range lay between a fine and a custodial sentence (*Mohd Raman bin Daud GD* at [44]). At the third step, the court held that the appropriate starting point should be a period of two months' imprisonment (*Mohd Raman bin Daud GD* at [46]). At the fourth step, taking into account the fact that Raman pleaded guilty, rendered immediate assistance to the victim, co-operated with the authorities and faced dated driving-related antecedents, the district judge calibrated the sentence downward to 4 weeks' imprisonment (*Mohd Raman bin Daud GD* at [47]).

36 In deciding on the appropriate length of the disqualification order, the court took into account the following: (a) Raman failed to stop at the stop line to check for oncoming traffic before executing the left turn; (b) Raman's car ran over the victim's bicycle; (c) the victim could be seen cycling slowly along the main road from Raman's right in the front view in-car camera footage; (d) there was a fair degree of potential harm considering the road conditions at the time. Accordingly, the district judge considered it in the public interest to remove him from the roads for a substantial period of time. She found that a disqualification period of 18 months was appropriate to fulfil the objectives of punishment, protection of the public and deterrence (*Mohd Raman bin Daud GD* at [54]–[56]).

Background to Erh's appeal in MA 9204

37 The appellant in MA 9204 is Mr Erh Zhi Huang, Alvan ("Erh"). On 30 August 2021, at about 6.56pm, Erh was driving his motor car along lane 1 of the three-lane PIE towards Tuas. Due to heavy traffic, the car travelling in front

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of Erh braked and came to a stop. Erh abruptly switched lanes from lane 1 to lane 2, failing to keep a proper lookout. This led to a collision between Erh's motor car and the victim who was travelling on his motorcycle in lane 2. At the time of the accident the weather was clear, the road surface was dry, and the traffic flow was heavy.

38 As a result of the accident, the victim was conveyed to Tan Tock Seng Hospital ("TTSH") by ambulance. The victim sustained the following injuries: (a) traumatic amputation of the right little finger; and (b) a right-sided clavicle fracture. A terminalisation of the right little finger was performed. The victim was discharged from the hospital on 31 August 2021, and given hospitalisation leave from 30 August 2021 to 8 September 2021, which was subsequently extended to 26 October 2021 (*ie*, a total of 57 days' medical leave).

39 The victim's motorcycle sustained the following damage:

(a) cracks, scratches and dents at the front of the motorcycle;

(b) dangling front head lamp;

(c) scratches on the front mudguard;

(d) broken left handle;

(e) dented right handle grip stopper; and

(f) scratches on the right of the rear box.

40 Erh's motor car sustained dents on the left rear door and scratches on the left front door.

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41 Erh was charged with one count of driving without due care and attention causing grievous hurt under s 65(1)(*a*) punishable under ss 65(3)(*a*) and 65(6)(*d*) of the RTA. He pleaded guilty to the charge and was convicted accordingly. The Prosecution submitted that a short detention order ("SDO") would be appropriate. The Defence took the same position and sought an SDO of 7 days.

42 The court sentenced Erh to 10 weeks' imprisonment and 5 years' DQAC from the date of his release. In arriving at this sentence, the court applied the sentencing framework set out in *Sue Chang*. The district judge's grounds of decision can be found in *Public Prosecutor v Erh Zhi Huang, Alvan* [2022] SGDC 251 ("*Erh Zhi Huang, Alvan GD*").[7]

43 At the first step of the *Sue Chang* framework, the court found that the harm caused was on the lower end of the serious category as the victim had suffered a traumatic amputation of his right little finger and a right-sided clavicle fracture. A terminalisation of his right little finger was performed, and he was hospitalised for 1 day and given 57 days' medical leave (inclusive of the hospitalisation). The district judge also took into consideration the property damage to the victim's motorcycle and the high level of potential harm that could have been caused given that the accident occurred during heavy evening traffic along a major expressway (*Erh Zhi Huang, Alvan GD* at [34]–[35]). In terms of culpability, the district judge found that Erh's culpability was at the higher end of the low category as he had failed to keep a proper lookout before abruptly changing lanes along the expressway with heavy traffic (*Erh Zhi Huang, Alvan GD* at [31]). At the second step, she held that the indicative sentencing range was between 4 to 8 months' imprisonment (*Erh Zhi Huang,*

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7 Record of Appeal for HC/MA 9204/2022 ("MA 9204 ROA") at pp 29–53.

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Alvan GD at [37]). At the third step, the district judge identified the appropriate starting point as 4 months' imprisonment (*Erh Zhi Huang, Alvan GD* at [38]). At the fourth step, the district judge appeared to take into account the fact that Erh had pleaded guilty and was untraced in calibrating the sentence downwards to 10 weeks' imprisonment.

44 The court rejected the Prosecution and the Defence's submissions that a SDO was appropriate in the circumstances. She observed that deterrence and the protection of the public were the main sentencing considerations in view of the seriousness of the offence and the degree of harm caused to the victim. She noted that Erh was not a younger accused person, the offence was not regulatory in nature and there was no evidence that he had any mental condition that contributed to the offending conduct (*Erh Zhi Huang, Alvan GD* at [46]).

Overview of appeals

45 The table below summarises the background to the respective appeals before us.

Case no	**Charge**	**Brief facts**	**Sentence imposed**
MA 9263	s 65(1)(*b*) punishable under s 65(4)(*a*)	Chen failed to give way to oncoming traffic with the right of way when executing a right turn, colliding into the victim motorcyclist. The victim sustained injuries such as extensive mesenteric injury	3 weeks' imprisonment and 16 months' DQAC

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		which required surgical intervention, including the removal of parts of the victim's small and large intestines. He also suffered from serious post-operative complications. He received 45 days of hospitalisation leave (inclusive of a 14-day hospitalisation period).	
MA 9113	s 65(1)(*a*) punishable under s 65(4)(*a*)	Chua failed to keep a proper lookout while changing lanes and collided into the victim who was a motorcyclist. The victim sustained injuries such as traumatic brain injury and facial fractures as a result of which he was warded in the surgical high dependency unit for 11 days, and received 41 days of hospitalisation leave. The victim's injuries were treated conservatively.	4 weeks' imprisonment and 3 years' DQAC
MA 9150	s 65(1)(*a*) punishable	Lim failed to keep a proper lookout when making a right turn as he exited the carpark and	Fine of $2,000 and 15 months' DQAC

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	under s 65(4)(*a*)	collided into the victim who was crossing the road. The victim had been standing in the middle of the road in Lim's direct line of sight for about 25 seconds prior to the collision. The victim sustained a left hip intertrochanteric fracture and a left knee tibia plateau fracture and underwent surgical fixation. He was given 210 days of hospitalisation leave (including a 15-day hospitalisation period). The victim was transferred to a community hospital to undergo rehabilitation after being discharged from the hospital.	
MA 9243	s 65(1)(*a*) punishable under s 65(4)(*a*)	Raman failed to stop at the stop line at the exit of a car park and did not keep a proper lookout when executing a left turn. This resulted in a collision with the victim who was riding a bicycle. There was nothing obstructing Raman's view in front of him and the victim was clearly visible. At one point, the victim	4 weeks' imprisonment and 18 months' DQAC

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		was directly in front of Raman's motor car, and yet he failed to apply his brakes to avoid the collision. The victim suffered injuries such as a tibia fibula open fracture and underwent surgical fixation. The victim was transferred to a community hospital for rehabilitation after being discharged from the hospital. He was warded for a total of 42 days.	
MA 9204	s 65(1)(*a*) punishable under ss 65(3)(*a*) and 65(6)(*d*)	As the car travelling in front of him braked, Erh abruptly switched lanes while driving on the expressway, failing to keep a proper lookout. This led to a collision with the victim who was riding a motorcycle. The victim sustained injuries such as the amputation of his right little finger and he was given 57 days of medical leave.	10 weeks' imprisonment and 5 years' DQAC

Issues to be determined

46 As alluded to above, a number of issues arise for our determination arising out of the legislative framework and the parties' submissions:

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(a) How should the provisions in s 65 of the RTA be interpreted? In particular:

(i) Are the categories of "hurt" and "grievous hurt" dichotomous or non-dichotomous?

(ii) Is the choice of the level of harm and by extension the choice of the punishment provision a matter of the exercise of prosecutorial discretion?

(b) What is the appropriate sentencing framework for ss 65(3)(*a*) and 65(4)(*a*) of the RTA?

(c) What is the relationship between the period of disqualification under a disqualification order and the fine and/or imprisonment sentence imposed?

(d) When is it appropriate for an SDO to be imposed for careless driving offences under s 65 of the RTA?

The 2019 RTA amendments

47 The formulation of a sentencing framework for careless driving offences punishable under ss 65(3)(*a*) and 65(4)(*a*) ought to be guided by the architecture of the new s 65 of the RTA and the legislative intention behind it. We thus begin by sketching out the key amendments to the RTA and the legislative intention which underpin these amendments.

48 Prior to the 2019 RTA amendments, s 65 of the previous RTA was framed as follows:

Driving without due care or reasonable consideration

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> **65.** If any person drives a motor vehicle on a road —
>
> (*a*) without due care and attention; or
>
> (*b*) without reasonable consideration for other persons using the road,
>
> he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 12 months or to both.

49 The provision sets out the range of penalties for first-time and repeat offenders of both limbs of the offence of careless driving (*ie*, driving without due care and attention and driving without reasonable consideration for other persons using the road). For first-time offenders, the prescribed penalties ranged from a fine not exceeding $1,000 up to imprisonment for a term not exceeding 6 months, or to both. For repeat offenders, the prescribed penalties ranged from a fine not exceeding $2,000 up to imprisonment for a term not exceeding 12 months, or to both.

50 The amendments to s 65 of the RTA which came into effect on 1 November 2019 following the passage of s 14 of the Road Traffic (Amendment) Act 2019 (Act 19 of 2019) (the "Amendment Act"), greatly altered its structure and introduced enhanced prescribed punishment ranges. We reproduce the relevant portions of the current iteration of s 65 (with the key provisions we are concerned with bolded for ease of reference):

> **Driving without due care or reasonable consideration**
>
> **65.**—(1) If any person drives a motor vehicle on a road —
>
> (*a*) without due care and attention; or
>
> (*b*) without reasonable consideration for other persons using the road,
>
> the person (called the offender) shall be guilty of an offence.

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(2) If death is caused to another person by the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —

…

(3) If grievous hurt is caused to another person by the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —

(*a*) be liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 2 years or to both;

(*b*) where the person is a repeat offender, be liable to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 4 years or to both;

(*c*) where the person is a serious offender in relation to the driving, be punished with a fine of not less than $2,000 and not more than $10,000 and with imprisonment for a term not exceeding 12 months, in addition to any punishment under paragraph (*a*) or (*b*); or

(*d*) where the offender is a serious repeat offender in relation to the driving, be punished with a fine of not less than $5,000 and not more than $20,000 and with imprisonment for a term not exceeding 2 years, in addition to any punishment under paragraph (*a*) or (*b*).

(4) If hurt is caused to another person by the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —

(*a*) be liable to a fine not exceeding $2,500 or to imprisonment for a term not exceeding 12 months or to both;

(*b*) in the case of a repeat offender, be liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 2 years or to both;

(*c*) where the person is a serious offender in relation to the driving, be liable to a fine of not less than $2,000 and not more than $10,000 or to imprisonment for a term not exceeding 12 months or to both, in addition to any punishment under paragraph (*a*) or (*b*); or

(*d*) where the offender is a serious repeat offender in relation to the driving, be punished with a fine of

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> not less than $5,000 and not more than $20,000 and with imprisonment for a term not exceeding 2 years, in addition to any punishment under paragraph (*a*) or (*b*).
>
> (5) In any other case involving the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) —
>
> …
>
> **(6) A court convicting a person of an offence under subsection (1) in the following cases is to, unless the court for special reasons thinks fit to not order or to order otherwise, order that the person be disqualified from holding or obtaining a driving licence for a disqualification period of not less than the specified period corresponding to that case:**
>
> …
>
> **(*d*) for an offender or a repeat offender in subsection (3)(*a*) or (*b*) — 5 years;**
>
> …
>
> [emphasis added in bold]

51 In *Wu Zhi Yong*, in the context of dangerous driving offences under s 64 of the RTA, the court observed (at [15]) that the Amendment Act envisaged a new scheme of penalties following a tiered structure calibrated according to the degree of harm caused. This observation is equally relevant in the context of careless driving offences under s 65 of the RTA. Sections 65(2) to 65(5) of the RTA prescribe specific ranges of penalties across four different categories of harm: death, grievous hurt, hurt and cases where no physical injury is caused. As observed in *Sue Chang* at [38], the maximum punishments which may be imposed for each category of harm increase concomitantly with the seriousness of the harm caused. Further, within each of these sub-provisions for the different categories of harm, the punishment provisions are tiered again according to whether the offender is a first-time offender, repeat offender, serious offender or serious repeat offender as defined in the RTA. As succinctly summarised by

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Mr Christopher de Souza during the Second Reading of the Road Traffic (Amendment) Bill (Bill No 13/2019) ("Amendment Bill") on 8 July 2019, the amended RTA with separate punishment regimes for dangerous driving and careless driving, calibrates the punishments meted out according to "culpability, aggravating factor of drink-driving or some other serious offence, gravity of hurt caused, and whether or not the offender is recalcitrant" (*Singapore Parliamentary Debates, Official Report* (8 July 2019), vol 94).

52 The impetus for the review and reform of both the careless driving and the dangerous driving provisions was explained by the Second Minister for Home Affairs, Mrs Josephine Teo ("Minister Teo") at the Second Reading of the Amendment Bill. She highlighted, in particular, the need for stronger deterrence against irresponsible driving (*Singapore Parliamentary Debates, Official Report* (8 July 2019), vol 94). This was to be achieved through: (a) enhancing the criminal penalties for irresponsible driving; and (b) tightening the regulatory regime against irresponsible driving.

53 Minister Teo also elaborated on the rationale behind the revised penal structure for irresponsible driving offences under ss 64 and 65 of the RTA, namely: (a) to consolidate irresponsible driving offences under the RTA; and (b) penalise irresponsible driving offences based on: (i) the circumstances of the driving; and (ii) the level of harm caused:

> For better clarity and consistency, we propose to consolidate irresponsible driving offences under the RTA. We will also streamline the offences into two classes: the first category is Reckless or Dangerous Driving, which I will refer to as Dangerous Driving in the rest of the speech. The second category is Driving without Due Care or Reasonable Consideration which I will refer to as Careless Driving.
>
> The definitions of Dangerous Driving and Careless Driving are currently in the RTA. We will maintain the current definitions.

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> Dangerous Driving is more serious than Careless Driving. The two can be differentiated, on a case-by-case basis. The three main considerations, among others, are as follows.
>
> First, whether the manner of driving predictably puts other road users at risk and cause other road users to be unable to react in time. Examples of driving that are considered as dangerous, as opposed to careless, include swerving across lanes suddenly and without warning, driving against the flow of traffic and speeding.
>
> Second, whether the motorist had driven, even though he should have known he was not in a condition to drive safely. Examples of behaviour that are considered dangerous include using mobile devices while driving and failing to use visual aids such as spectacles even though he is seriously short-sighted.
>
> Third, whether the road situation required the motorist to take extra care but he did not. Examples include when he is approaching a zebra crossing, or a junction where other road users have the right of way.
>
> When determining the punishment, we will look at the circumstances under which the offence is committed. The threshold for Dangerous Driving is higher than Careless Driving; so too the penalties.
>
> Besides looking at the circumstances of the offence, our enhanced approach will also consider the level of harm caused. If the motorist causes more harm, the level of punishment will be higher.
>
> There will be four levels of harm: Death, Grievous Hurt, Hurt and Endangering Life. Such tiering of harm is not new in our laws – the Penal Code already has it.
>
> To summarise, we will enhance our overall approach to penalise irresponsible driving depending on: (a) the circumstances of the offence – whether it constitutes Dangerous Driving or Careless Driving; and (b) the level of harm caused – whether they result in Death, Grievous Hurt, Hurt, or Endangering Life.

54 To provide context to Minister Teo's stated objective of consolidating irresponsible driving offences under the RTA, we note that irresponsible driving offences were previously prosecuted under a range of provisions in the Penal Code and the previous RTA. These provisions included: ss 336, 337, 338 and 304A of the Penal Code in relation to rash and negligent acts resulting in

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differing degrees of harm and ss 64 and 65 of the previous RTA for dangerous driving and careless driving. The dangerous driving and careless driving offences in the RTA correspond broadly to the rash act and negligent act offences in the Penal Code. Parliament found it necessary to consolidate the prosecution of such offences under the RTA and also to enhance the punishments to provide for longer maximum imprisonment terms and higher maximum fines, where applicable, than the corresponding rash act and negligent act offences in the Penal Code.[8]

55 While Parliament's articulated objectives behind the amendments to the RTA are clear, the difficulty the courts face lies in navigating the complex interaction of the various provisions, given the numerous permutations under which an offender convicted of a careless driving offence may be punished. The challenge is not to view each provision in isolation, but to consider the structure of the provisions as a whole, to ensure both coherence in sentencing approaches as well as consistency with legislative intent. With this legislative background in mind, we turn to consider the fundamental question of how the punishment provisions in s 65 of the RTA relate to one another. This will invariably inform our decision on the appropriate sentencing framework for ss 65(3)(*a*) and 65(4)(*a*) of the RTA.

Interpretation of the provisions in s 65 of the RTA

56 In the present set of appeals, we are tasked with determining the appropriate sentencing framework for careless driving offences where either grievous hurt or hurt has been caused, punishable under ss 65(3)(*a*) and 65(4)(*a*) respectively. As we alluded to at [55] above, the critical issue that has to be

[8] "Strengthening Deterrence Against Irresponsible Driving", MHA Press Release dated 21 February 2019 at para 5(d).

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resolved at the outset is the scope and interaction of the various punishment provisions in s 65. Primarily, the punishment provisions are tiered in accordance with four categories of harm: death (s 65(2)), grievous hurt (s 65(3)), hurt (s 65(4)) and no physical injury (s 65(5)). This raises the question of the proper interpretation of each of these categories of harm – importantly, whether they are discrete or non-discrete.

57 We start with the definition of "grievous hurt" in s 65(3) of the RTA. Section 64(8) of the RTA expressly defines "grievous hurt" with reference to the definition of the same term as contained in s 320 of the Penal Code, with the exclusion of death. The categories of "death" and "no physical injury" also leave no definitional ambiguity and are self-explanatory. There is, however, no clear definition for "hurt" in s 65(4) of the RTA. We therefore have to consider the precise scope of "hurt" and whether it is broad enough to encompass harm which could also be classified as "grievous hurt" for the purpose of s 65(3).

58 The principles of purposive interpretation are trite. In *Tan Cheng Bock v Attorney General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"), the Court of Appeal summarised the approach to purposive interpretation under s 9A of the Interpretation Act 1965 (2020 Rev Ed) (at [37]) as follows:

> (a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.
>
> (b) Second, ascertain the legislative purpose or object of the statute.
>
> (c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

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Possible interpretations of "hurt" in s 65(4) of the RTA

59 The first step requires us to ascertain the possible interpretations of the provision by determining the plain and ordinary meaning of the words of the legislative provision: *Tan Cheng Bock* at [38].

60 There are two possible interpretations of "hurt" in s 65(4) of the RTA:

(a) "hurt" defined with reference to s 319 of the Penal Code as "bodily pain, disease or infirmity to any person", which includes grievous hurt but excludes death (the "Penal Code Interpretation"); or

(b) "hurt" defined as any physical injury to the exclusion of grievous hurt as defined in s 65(3) and death (the "Exclusive Interpretation").

61 Before we turn to consider the ordinary meaning of "hurt" preferred in s 65(4) of the RTA, we set out the parties' positions on the possible interpretations briefly. The Prosecution urges us to accept the Penal Code Interpretation. Their primary argument is that the reference in s 64(8) of the RTA to s 320 of the Penal Code "imports" the reference to s 319 of the Penal Code for the definition of "hurt" in s 65(4) of the RTA, and further that, by necessary implication this should exclude death for the purposes of the RTA. Mr Yong had initially taken the same position in his written submissions but later preferred the Exclusive Interpretation at the hearing and in his further written submissions. The appellant in MA 9204 (*ie*, Erh) agrees that the Exclusive Interpretation is correct,[9] while the appellants in MA 9263 and

[9] Appellant's Supplementary Submissions in MA 9204 at para 10.

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MA 9113 (*ie*, Chen and Chua) prefer the Penal Code Interpretation. Chen reasons that this accords with "the more natural meaning of hurt",[10] while Chua submits that the meaning of the word "hurt" is ambiguous and the extraneous material indicates that the Penal Code Interpretation is to be preferred.[11] The appellants' positions are perhaps not surprising in that except for Erh, whose charge was not reduced by the Prosecution for reasons that were not made known to us, all the other appellants had their charges reduced. This outcome would only have been possible if the Penal Code Interpretation was applied.

62 The ordinary meaning of "hurt" in s 65(4) must be derived from the context of s 65 and the broader RTA. From the form and substance of s 65 of the RTA, it can be seen that Parliament promulgated a categorisation-centric approach to sentencing for careless driving offences. As we explain below, the Exclusive Interpretation best comports with this approach.

63 We begin with the structure of s 65 of the RTA. The offence-creating provision is found in s 65(1) of the RTA, which reads as follows:

> **Driving without due care or reasonable consideration**
>
> **65.**—(1) If any person drives a motor vehicle on a road —
>
> (*a*) without due care and attention; or
>
> (*b*) without reasonable consideration for other persons using the road,
>
> *the person (called the offender) shall be guilty of an offence.*
>
> [emphasis added]

That this provision is concerned with establishing liability is plainly reflected in the language used. It is stated that an offender "shall be guilty of an offence" of

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10 Appellant's Supplementary Submissions in MA 9263 at para 7.

11 Appellant's Supplementary Submissions in MA 9113 at paras 12–15.

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careless driving, where either of the two disjunctive elements provided for in ss 65(1)(*a*) and 65(1)(*b*) is fulfilled. Further, s 65(8) of the RTA defines a "repeat offender" as a person who has been convicted on at least one other earlier occasion of "any of the following offences" and in identifying the relevant prior offences, the offence of careless driving is identified as "*an offence under subsection (1)*" [emphasis added].

64 The punishment provisions for s 65(1) are separately found in ss 65(2) to 65(8) of the RTA. These provisions prescribe the applicable range of punishments which may be imposed following the conviction of an offender on a charge of careless driving based on certain offence-specific factors and personal attributes of the offender, including: (a) the type of harm caused (see ss 65(2), 65(3), 65(4) and 65(5)); (b) the culpability of the offender, specifically, where he has been charged concurrently with another offence under ss 67 or 70(4) (see the "serious offender" and "serious repeat offender" provisions); and (c) the recidivism of the offender (see the "repeat offender" and "serious repeat offender" provisions). Notably, this tiered penalty structure was only introduced by s 14 of the Amendment Act.

65 In sum, in terms of form, s 65(1) exists independently as an offence-creating provision while ss 65(2) to 65(8) collectively exhibit a tiered punishment structure guided by specific attributes. It is especially relevant that each of the punishment provisions are structured in the syntactic form "if [type of harm (*ie*, death, grievous hurt, hurt or no physical injury)] is caused to another person by the driving of a motor vehicle by the offender, the offender shall on conviction of an offence under subsection (1) – [be liable to a specified range of punishment]". The "if [type of harm]" clause functions as a condition precedent to the latter punishment clauses. Put simply, each "if [type of harm]" clause functions to delineate discrete categories of harm flowing from which a

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specific range of penalties apply. This strongly lends support to the Exclusive Interpretation.

66 In terms of substance, the Exclusive Interpretation is also supported by the statutory context of s 65. As mentioned above at [57], "grievous hurt" in s 65(3) of the RTA is defined in s 64(8) of the RTA with reference to the definition of "grievous hurt" in s 320 of the Penal Code with the exception of death. However, there is no express definition of "hurt" in the RTA, with reference to s 319 of the Penal Code or otherwise. Parliament no doubt could have considered defining "hurt" in s 65(4) with reference to s 319 of the Penal Code, in the same way as "grievous hurt". Yet, it is striking that Parliament did not do so. Conceivably, this was because Parliament intended to leave room for the courts to define "hurt", without constraining them to the definition of "hurt" in the Penal Code. In our judgment, it is significant that s 64(8) of the RTA expressly excludes s 320(*aa*) of the Penal Code (*ie*, death) from the definition of "grievous hurt" in the RTA. This is unlike in the Penal Code, where "grievous hurt" includes the occasion of death. Indeed, the parties accepted at the hearing that the punishment provisions concerning "death" (s 65(2)) and "no hurt" (*ie*,"[i]n any other case" in s 65(5)) reflect *exclusive* categories of harm. It stands to reason that if two of the four categories of harm are exclusive in nature, the remaining two should be read in the same way. In our view, the express exclusion of the occasion of death from grievous hurt in s 65(3) and the identification of the categories of harm in ss 65(2) and 65(5) as exclusive only buttress the Exclusive Interpretation and the discrete nature of the categories of harm.

67 Therefore, in our view, it is clear and unambiguous that the Exclusive Interpretation reflects the ordinary meaning of "hurt" in s 65(4).

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68 In order to confirm this meaning of "hurt", we turn next to ascertain the legislative purpose of the RTA, and more specifically, s 65 of the RTA.

Legislative purpose of the RTA and s 65 of the RTA

69 The legislative purpose of the RTA and s 65 of the RTA may be gleaned from internal sources as well as the extrinsic sources. The court is to prefer the internal sources in ascertaining purpose, over the extraneous material: *Tan Cheng Bock* at [43].

70 We begin with the main internal textual sources from which one may derive the purpose of s 65 of the RTA. The long title of the RTA reads as follows: "it is an Act for the regulation of road traffic and the use of vehicles and the user of roads and for other purposes connected therewith". This, however, does not shed any light on whether the Exclusive Interpretation is to be preferred over the Penal Code Interpretation. Of more importance is the structure and wording of s 65. It is apparent from the manner in which s 65 is drafted that it is divided into two portions: (a) the offence-creating provision; and (b) the punishment provisions. The specific purpose of s 65(4) is to provide for the range of penalties applicable to an offence of careless driving that occasions hurt. It needs to be read in context of the other provisions in the RTA, especially the other punishment provisions. From the manner in which the other punishment provisions have similarly been framed, the Parliamentary intent behind s 65(4) of the RTA must have been to lay down a structured classification of the categories (or pre-conditions) which will guide the sentencing courts to applying the applicable range of punishment. It would defeat the purpose of the structured classification of the categories to define "hurt" in s 65(4) as encompassing also "grievous hurt" in s 65(3), and in this way the Exclusive Interpretation better serves the legislative intent behind the tiered structure of

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punishment. It appears that it is through this categorisation-centric tiered approach that Parliament intended to levy the appropriate punishment on the notional careless driving offender to meet the broader purpose of the regulation of road traffic and the use of vehicles.

71 Turning to the extraneous material, we find it helpful to construe s 65 (and indeed s 65(4)) in light of the relevant parliamentary debates on the RTA.

72 We have discussed the Parliamentary debates in detail earlier in the judgment (see [50]–[53] above). The 2019 amendments to the RTA were intended to introduce stiffer penalties and to deter the incidence of irresponsible driving on our roads. This was practically implemented through the introduction of a tiered punishment structure for careless and dangerous driving offences under ss 64 and 65 of the RTA, with enhanced penalties for such offences.

73 In our view, the Exclusive Interpretation advances the purpose of the written text by delineating the categories of "grievous hurt" and "hurt" as exclusive to the other, in order to facilitate the tiered punishment regime in s 65. In relation to ss 64 and 65 of the RTA specifically, the legislative rationale is to: (a) to consolidate irresponsible driving offences under the RTA; and (b) penalise irresponsible driving offences based on: (i) the circumstances of the driving; and (ii) the level of harm caused (see [53] above). The discrete nature of the categories of harm under s 65 of the RTA ensures that the penalties accruing to offenders are meted out in a structured fashion commensurate to the level of harm caused. The Exclusive Interpretation furthers the Parliamentary intention behind s 65, that is, to penalise driving behaviours in a manner that is proportional to harm and the circumstances of driving. Indeed, the Prosecution acknowledges that the Exclusive Interpretation is plausible and reasonable, and

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concedes that this interpretation could arguably be "more in line with the scheme set out in s 65 of the RTA".[12]

74 In our judgment, on a purposive interpretation of the meaning of "hurt" in s 65(4) of the RTA, the Exclusive Interpretation should be adopted. That being said, it is apposite to emphasise at this juncture that while the definitions of "grievous hurt" and "hurt" are exclusive based on *type*, the categories are not exclusive in terms of *severity*. In other words, it is possible for some injuries classified as falling within "hurt" under s 65(4) to be more severe than some injuries categorised as "grievous hurt" under s 65(3). The possible overlap between the severity of an injury falling within "hurt" and the severity of an injury falling within "grievous hurt" is provided for by the overlap in the statutorily-prescribed ranges of punishment in ss 65(3)(*a*) and 65(4)(*a*) of the RTA. The sentencing court should therefore be careful to consider the *classification* of the offence based on the *type* of hurt, but also the *calibration* of the selected sentence within the punishment range for the specific type of hurt based on its *severity*.

Prosecutorial discretion under s 65 of the RTA

75 We now turn to consider how adopting the Exclusive Interpretation in respect of the punishment provisions, in particular, ss 65(3) and 65(4) of the RTA, practically impacts the exercise of prosecutorial discretion.

76 It is apparent from a survey of the reported decisions that the Prosecution has on occasion reduced charges from the offence of careless driving causing grievous hurt under s 65(3)(*a*) of the RTA to the offence of careless driving

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12 RFWS at para 9.

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causing hurt under s 65(4)(*a*) of the RTA. In light of the amendments to the RTA, we find it opportune to reconsider the legitimacy of this practice – specifically, whether the exercise of prosecutorial discretion can extend to the determination of the applicable punishment provision faced by an offender in preferring the charge against him or her.

The role of the Attorney-General as the Public Prosecutor and prosecutorial discretion

77 In order to understand the ambit of prosecutorial discretion, it is important to first uncover its source and rationale. The criminal justice system in Singapore is administered through the functions performed by the respective constitutional organs of state: (a) the Legislature (*ie*, Parliament) prescribes offences and their accompanying tariffs; (b) the Executive (*ie*, the Attorney-General as the Public Prosecutor) determines the institution, conduct and withdrawal of prosecution for offences; and (c) the Judiciary adjudicates the proceedings and determines the appropriate sentence within the statutorily-prescribed range of tariffs where an offender has been convicted of an offence.

78 The statutory source of prosecutorial discretion conferred on the Attorney-General is provided for under Art 35(8) of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution"). The Attorney-General wields the "power, exercisable at his discretion, to institute, conduct or discontinue any proceedings *for any offence*". He is the Public Prosecutor and has "the control and direction of criminal prosecutions and proceedings under [the Criminal Procedure Code] or any other written law": s 11(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). The exercise of prosecutorial discretion is guided at all times by the public interest in the application of the rule of law: Kevin Y L Tan and Thio Li-ann, *Constitutional and Administrative*

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Law in Singapore: Cases, Materials and Commentary (Academy Publishing, 2021) at para 7.004; Attorney-General's Chambers and the Law Society of Singapore, *The Code of Practice for the Conduct of Criminal Proceedings by the Prosecution and the Defence* (2013) at para 5.

79 The scope and content of prosecutorial discretion is wide. It includes whether to commence proceedings against an accused person for a criminal offence, and the choice of charge against an accused person, for instance, with the most serious offence that the facts might disclose or with a less serious one: see *Lee Keng Guan v Public Prosecutor* [1977–1978] SLR(R) 78 at [27]–[28].

80 While there is significant latitude in the exercise of prosecutorial discretion, the courts have also recognised that there are limits. Specifically, it is subject to judicial review in two situations: (a) where the prosecutorial power is abused, *ie*, where it is exercised in bad faith for an extraneous purpose; or (b) where its exercise contravenes constitutional protections and rights: *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") at [17]; *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 ("*Phyllis Tan*") at [149].

81 Where the exercise of prosecutorial discretion has exceeded its limits (see [80] above), the courts may intervene based on its constitutionally-conferred authority pursuant to Art 93 of the Constitution. This does not amount to an intrusion into the ambit of the Attorney-General's exercise of prosecutorial discretion as Public Prosecutor because he has acted in excess of the limits of the discretion conferred by the Constitution: *Phyllis Tan* at [144].

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The role of the courts and judicial discretion in sentencing

82 Judicial power which is vested in the courts by Art 93 of the Constitution is constitutionally equal in status to the prosecutorial power vested in the Attorney-General pursuant to Art 35(8) of the Constitution: *Ramalingam* at [43].

83 In *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 ("*Mohammad Faizal bin Sabtu*"), then-Chief Justice Chan Sek Keong ("Chan CJ") considered the scope and nature of judicial power *vis-à-vis* the punishment of offenders. Chan CJ observed that the judicial discretion to determine the sentence to impose on an offender is conferred through statute, in accordance with the range of sentences prescribed by the legislature: *Mohammad Faizal bin Sabtu* at [40] and [45].

The interplay of prosecutorial discretion and judicial discretion under s 65 of the RTA

84 The nature of the prosecutorial discretion under s 65 of the RTA has to be examined in the context of its statutory construction.

85 Within s 65 of the RTA, the Prosecution has the discretion to "institute, conduct or discontinue" proceedings against an offender under s 65(1). This discretion, however, does not extend to the choice of the subsections pertaining to *punishment*, which confer upon the sentencing courts the discretion to select the appropriate sentence within the applicable range of sentences. Whether the conditional attributes (*ie*, the type of hurt, the presence of aggravating factors such as specific or repeat offenders) are satisfied is a matter of *fact*. Subsequent to the classification of the offence by the conditional attributes, the courts are

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conferred the power to adjudicate and determine the appropriate sentence within the prescribed range of punishment.

86 In the context of the criminal justice system, given the constitutionally demarcated roles of the Attorney-General (as the Public Prosecutor) and the courts, it is clear that the function of the Prosecution centres on determining whether to charge, and if so, what the appropriate charge is based on the public interest, while the courts' role is in the adjudication of the matter to determine whether there ought to be a conviction and to select a sentence based on the scope of sentencing discretion accorded by Parliament in the statutorily-prescribed punishment provisions. It therefore falls to the construction of the statute criminalising the specific conduct to determine how the discretion is operationalised. The contours of the discretion conferred on the Attorney-General as prosecutorial discretion and the discretion conferred on the courts as judicial discretion are defined by the legislature's decision in what conduct to criminalise, the elements of the offence which would satisfactorily prove the criminal conduct and the prescribed sentence for the criminal conduct, as discerned through the wording of the statute.

87 The nature and scope of prosecutorial discretion as defined in s 65(1) of the RTA is consistent with the respective roles of the constitutional organs in the regulation of criminal conduct. The Legislature has the power to prescribe punishment, whilst the Judiciary wields the power to exercise such sentencing discretion as conferred by statute to select the appropriate punishment: *Prabagaran a/l Srivijayan v Public Prosecutor and other matters* [2017] 1 SLR 173 ("*Prabagaran*") at [60]; *Teo Ghim Heng v Public Prosecutor* [2022] 1 SLR 1240 ("*Teo Ghim Heng*") at [125]. In line with the principle of separation of powers, the Executive may not undertake roles pertaining to the exercise of sentencing discretion that would fall within the remit of the

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Judiciary, the effect of which would be to curtail the invocation and exercise of sentencing powers conferred on the Judiciary by statute: *Teo Ghim Heng* at [125]; *Prabagaran* at [61], referencing *Hinds v The Queen* [1977] AC 195 at 226–227). To allow the Prosecution the ability to choose between ss 65(3) and 65(4) is tantamount to an encroachment into the powers of the courts in sentencing by determining the range of punishment applicable to the offender. Thus, in the context of s 65 of the RTA, the exercise of prosecutorial discretion is complete once the Prosecution decides to prosecute the offence under s 65(1) of the RTA. The imposition of the appropriate sentence within the statutorily-prescribed ranges of punishment is a matter of sentencing for the courts.

88 A distinction can be drawn between s 65 of the RTA and other penal provisions where the hurt that is caused is an element of the offence in itself. For example, for the offences of voluntarily causing hurt under s 321 of the Penal Code and voluntarily causing grievous hurt under s 322 of the Penal Code, the hurt caused forms the *actus reus* of the offences and the *intention* to cause that hurt forms the *mens rea* of the offences.

Section 321 of the Penal Code is reproduced below:

> **Voluntarily causing hurt**
>
> 321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

Section 322 of the Penal Code reads as follows:

> **Voluntarily causing grievous hurt**
>
> 322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is

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> grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".
>
> *Explanation.*— A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Given the fact that the type of hurt caused is an element of the offence in these provisions, the prosecutorial discretion borne by the Prosecution extends to the choice of which provision (and type of hurt) it may proceed with against an offender. Additionally, this is a function of the definition of "hurt" in s 319 of the Penal Code which is broad enough to include harm which could also be regarded as "grievous hurt" under s 320 of the Penal Code, which is defined by the designation of a specific subset of "hurt" as grievous. Under the Penal Code regime, grievous hurt is a subset of hurt (s 320) and death is one manifestation of grievous hurt (s 320(*aa*)). The manner in which the definitions of "hurt" and "grievous hurt" are laid down in the Penal Code provides for overlapping categories of types of hurt. In the RTA regime, however, it is clear that the categories of "hurt" are mutually exclusive definitions.

89 At the hearing, Deputy Attorney-General Tai Wei Shyong ("DAG Tai") argued that the Prosecution engaged in similar charging practices of reducing charges in the context of the Misuse of Drugs Act 1973 (2020 Rev Ed) ("MDA"), where there also exists a tiered punishment regime albeit based on the quantity of the drug trafficked.[13] In this regard, the Second Schedule of the MDA contains a range of applicable punishments for drug traffickers which is calibrated by the quantity and type of the drug trafficked. Notwithstanding the punishment structure in the MDA, it is accepted that the Prosecution is able to

[13] Transcript (18 July 2023) at 24:6–10.

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amend the quantity of the drug trafficked which is proceeded on in the charge, with the effect of reducing a capital charge to a non-capital charge. We thus make a few observations on the exercise of prosecutorial discretion *vis-à-vis* judicial discretion in the context of offences under the MDA.

90 As we have explained above at [84]–[87], the construction of the statute informs the scope and ambit of the exercise of prosecutorial discretion in charging *vis-à-vis* judicial discretion in sentencing. In the MDA, the offence-creating provision for trafficking (s 5(1) of the MDA) and the punishment provisions (s 33(1) of the MDA read with the Second Schedule to the MDA, and s 33B of the MDA) are separate. Flowing from our analysis above, it may seem apposite to define prosecutorial discretion in the context of the MDA as being whether the charge for drug trafficking under s 5(1) is preferred over another suitable charge such as drug possession under s 8. This would parallel the scope of prosecutorial discretion in s 65 of the RTA, which is based on whether the charge for careless driving under s 65(1) is preferred over another charge such as dangerous driving under s 64(1).

91 The Court of Appeal has previously settled the appropriateness of this practice in *Ramalingam* and stated as follows (at [65]):

> With regard to the Applicant's argument that the prosecutorial discretion cannot and may not extend to contradicting the scientific fact that a specific set of drugs can only have one quantification in weight (see [57] above), we note the established practice that whenever the Prosecution decides to prefer a less serious drug trafficking charge against an offender, its practice is to specify the quantity of drugs involved as "not less than" a certain quantity. This formulation is, of course, expressly designed to bring the charge under the applicable sentencing scale prescribed in the Second Schedule to the MDA (in words similar to the statutory language used to define the different sentencing scales according to different quantities of drugs). In this way, ***the formulation used by the Prosecution, despite being somewhat artificial and intended to describe a***

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> ***quantity of drugs other than the forensically-established quantity***, permits two offenders trafficking in the same quantity of drugs to be charged with different offences carrying different punishments. ***In doing so, the Prosecution is not denying any scientific fact, but is instead simply reducing the quantity of drugs specified in the charge against one offender in order to give effect to its decision to charge that offender differently from his co-offender***. The crucial issue is whether a decision of this nature is within the limits of the prosecutorial discretion accorded to the Attorney-General under the law. In our view, ***provided that such a decision is made for legitimate reasons, it is and has always been permitted under the common law, and Art 35(8) of the Constitution has merely incorporated that position***.
>
> [emphasis added in bold italics]

92 We draw two distinctions between the ambit of prosecutorial discretion between drug trafficking under the MDA and careless driving under the RTA. As this court observed at the hearing, it *is* a matter of prosecutorial discretion to decide the quantity of drugs the Prosecution seeks to charge the offender for.[14] This involves the permissible exercise of prosecutorial discretion to state within the charge a quantity below the amount attracting capital punishment (*eg*, "not less than 14.99g of methamphetamine") where a higher quantity of drugs was in fact seized by the Central Narcotics Bureau. By preferring such a charge under the MDA, the Prosecution exercises its discretion not to charge for the rest of the quantity of the drugs seized. In contrast, under the prevailing charging practice for careless driving offences under s 65(1) of the RTA, the charge is based on harm that amounts to grievous hurt but cites instead the punishment provision which applies to hurt *simpliciter*. This is equivalent to invoking the provision for a different punishment under a different "hurt" limb. By way of an illustration, the facts underpinning the charge against Lim in MA 9150 involve, *inter alia*, "left hip intertrochanteric fracture and left knee tibia plateau

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14 Transcript (18 July 2023) at 24:11–19.

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fracture" which amount to grievous hurt under s 64(8) of the RTA. The charge brought against Lim reads "*hurt* was caused to the said [victim], by such driving, and you have thereby committed an offence under Section 65(1)(a) of the [RTA] punishable under Section 65(4)(a) of the [RTA]". This is put in issue because the Prosecution then relies in the Statement of Facts on facts going toward one punishment provision (*ie*, injuries amounting to grievous hurt) but invokes another punishment provision that comes into effect by a different set of facts (*ie*, injuries amounting to hurt).

93 The other key distinguishing factor lies in the categorisation within the tiered punishment provisions in the MDA and the RTA. It must be highlighted that the categories in the Second Schedule of the MDA exist on a continuous range (*ie*, *weight* or *quantity* of drug), while the categories of harm within s 65 of the RTA are discrete, exclusive categories (*ie*, by *type* of harm). Under the MDA, the exercise of prosecutorial discretion to proceed on a lower quantity of drugs for a charge of drug trafficking would still be factually consistent with the higher quantity of drugs in fact seized. For instance, the phrase "not less than 14.99g of methamphetamine" accurately describes any quantity of drugs involved when it is equivalent to or exceeding 14.99g. In contrast, under the RTA, if the Prosecution opted instead to proceed on a careless driving causing hurt charge under s 65(4) on the type of harm that is properly classified as grievous hurt, this results in the uneasy situation where the facts underpinning the charge do not support the punishment provision invoked. This is because the categories of "hurt" and "grievous hurt" are discrete and mutually exclusive in the type of harm each category contains. In other words, flowing from the Exclusive Interpretation, hurt is not a subset of grievous hurt under the RTA regime; a reduced quantity of the drug is a subset of the actual quantity of the drug under the MDA regime.

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94 Therefore, we take the view that there is no inconsistency between the scope of prosecutorial discretion in the context of drug trafficking offences under the MDA and the delineated scope of prosecutorial discretion in s 65 of the RTA. As a matter of logic, it also cannot be that the prosecutorial discretion to reduce charges is limited to only one harm category (*ie*, grievous hurt to hurt). This is so given that a charge of careless driving causing death cannot be reduced to a charge of careless driving causing grievous hurt, as this is curbed by the unequivocal exclusion of "death" from the definition of "grievous hurt" in the RTA pursuant to s 64(8). A charge of careless driving causing hurt similarly cannot be reduced to a charge of careless driving causing no injury. For the reasons we explain at [92]–[93] above, the Exclusive Interpretation necessarily precludes such a practice. As a further point, we note the arbitrariness and artificiality of framing a charge which invokes the punishment provision for "hurt" (*ie*, s 65(4)(*a*)) where the underlying facts instead disclose injuries amounting to "grievous hurt" (which is a *separate*, non-overlapping category of "hurt"). This is particularly since the Prosecution owes a duty to the court to ensure that all relevant facts of the offence and the offender are placed before the court at the stage of sentencing. Indeed, DAG Tai conceded at the hearing before us that the Prosecution would not have the discretion to reduce charges from careless driving causing grievous hurt to careless driving causing hurt *simpliciter* if the Exclusive Interpretation was the correct interpretation.[15]

95 We should stress that our analysis above should strictly be confined to the specific context of the RTA. It is because of the way that Parliament has reshaped the RTA through the 2019 amendments, that the Prosecution's discretion is limited only to deciding whether to prosecute under s 65(1) of the

[15] Transcript (18 July 2023) at 25:1–4.

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RTA. The Parliamentary intent in the context of the RTA (see [70] above) is to levy punishment proportional to the careless driving offence to meet the broader legislative purpose of road use regulation. As the table (see [45] above) illustrates, however, there does not appear to be an explicable relationship between the sentences imposed for the offences in the present appeals and the respective levels of culpability and harm identified. The Exclusive Interpretation fosters a greater degree of consistency and certainty in the sentencing of careless driving offenders, and therefore furthers the legislative intent behind the RTA.

The appropriate sentencing frameworks for careless driving offences punishable under ss 65(3)(*a*) and 65(4)(*a*) of the RTA

96 Having concluded that the Exclusive Interpretation applies, the next question that comes to mind is: how, if at all, does this affect the choice of the type of sentencing approach to adopt for careless driving offences punishable under ss 65(3)(*a*) and 65(4)(*a*)?

Sentencing frameworks – General principles

97 We start by setting out some general principles concerning the use of sentencing frameworks.

98 Our courts have devised and relied on various sentencing approaches to assist in the determination of sentences across a wide range of offences committed by a diverse pool of offenders. The Court of Appeal has previously set out the following main sentencing approaches utilised by our courts: (a) the "single starting point" approach; (b) the "multiple starting points" approach; (c) the "benchmark" approach; (d) the "sentencing matrix" approach; (e) the "sentencing bands" approach; and (f) the *Logachev*-hybrid approach: *Ng Kean*

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Meng Terence v Public Prosecutor [2017] 2 SLR 449 ("*Terence Ng*") at [26] and [39] and *Logachev* at [75].

99 At the hearing, the parties and Mr Yong urged us to endorse with varying modifications the *Sue Chang* sentencing framework for careless driving offences causing grievous hurt punishable under s 65(3)(*a*) of the RTA, which is based on the *Logachev*-hybrid approach. They further submitted that this modified *Sue Chang* framework could be adapted to cater for careless driving offences causing hurt punishable under s 65(4)(*a*) of the RTA. Their submissions were, however, premised on the assumption that the punishment provisions were non-discrete and that the Penal Code Interpretation applied. Following the queries posed at the hearing, their view has since evolved.

100 The Prosecution now submits that if the punishment provisions are discrete and that the Exclusive Interpretation of "hurt" is preferred, a modified "sentencing bands" approach similar to what was set out in *Wu Zhi Yong* and *Low Song Chye v Public Prosecutor and another appeal* [2019] 5 SLR 526 ("*Low Song Chye*") should be adopted instead.[16] Chen, Chua, Erh, and Mr Yong align themselves with the Prosecution's submission.[17] Lim and Raman did not express any further views after the hearing.

101 Given the parties' submissions on the applicable sentencing framework for ss 65(3)(*a*) and 65(4)(*a*) of the RTA, we address the *Logachev*-hybrid approach before we analyse the "sentencing bands" approach.

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16 Respondent's supplementary submissions dated 1 August 2023 at para 13.

17 YICFWS at para 12; AFWS in MA 9263 at para 19.

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(1) The *Logachev*-hybrid approach

102 The *Logachev*-hybrid approach comprises a two-stage, five-step framework which eschews a focus on the "principal factual elements" of the case and instead employs at the first step a general holistic assessment of the seriousness of the offence by reference to all the offence-specific factors (*Ye Lin Myint v Public Prosecutor* [2019] 5 SLR 1005 at [46]).

103 As stated above, in *Sue Chang*, the High Court adopted the *Logachev*-hybrid approach to formulate a sentencing framework for careless driving offences causing grievous hurt punishable under s 65(3)(*a*) of the RTA.

104 The court declined to adopt the "sentencing bands" approach proposed by the young *amicus curiae* and the Defence, and modelled a sentencing framework after the *Logachev*-hybrid five-step approach:

(a) First step: The court first has to identify: (i) the level of harm caused by the offence (low, moderate or serious); and (ii) the level of the offender's culpability (low, moderate or high) (at [85]). Factors which contribute to the severity of the harm caused include: (i) injuries; (ii) property damage; and (iii) potential harm. For culpability, the following factors were relevant: (i) circumstances which required the offender to exercise extra care or consideration; (ii) the offender's manner of driving; and (iii) the offender's conduct following the offence (at [94]).

(b) Second step: The court must then identify the applicable indicative sentencing range in the following sentencing matrix which is applicable in situations where the offender has claimed trial (at [99]).

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Harm / Culpability	Low	Moderate	Serious
Low	Fine	Fine or up to 4 months' imprisonment	Between 4 to 8 months' imprisonment
Moderate	Fine or up to 4 months' imprisonment	Between 4 to 8 months' imprisonment	Between 8 to 12 months' imprisonment
High	Between 4 to 8 months' imprisonment	Between 8 to 12 months' imprisonment	Between 12 to 24 months' imprisonment

(c) Third step: The court should identify the appropriate starting point within the indicative sentencing range (at [105]).

(d) Fourth step: The court should then make adjustments to the starting point to take into account offender-specific aggravating and/or mitigating factors (at [106]).

(e) Fifth step: This final step is relevant only where an offender is faced with multiple charges. It requires the court to consider the need to make further adjustments to the individual sentences for each charge to take into account the totality principle (at [109]).

105 We are mindful that the court in *Sue Chang* did not have the benefit of submissions on the interpretation of s 65(3)(*a*) and whether the category of grievous hurt caught by s 65(3)(*a*) overlapped with the category of hurt *simpliciter* in s 65(4)(*a*). The court in that case was only faced with the question of the applicable sentencing framework for s 65(3)(*a*).

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(2) The "sentencing bands" approach

(A) THE CLASSICAL "SENTENCING BANDS" APPROACH

106 The classical "sentencing bands" approach is set out in *Terence Ng*. It involves a two-step analysis where the court identifies which of the three bands the offence in question falls within having regard to the offence-specific factors at the first step, and thereafter calibrating the appropriate sentence with regard to the offender-specific factors at the second step (at [39]).

107 In *Terence Ng*, the Court of Appeal was concerned with the offence of statutory rape under s 375(1)(*b*) of the Penal Code. The three sentencing bands were differentiated by the *number* of offence-specific factors present, which reflects the manner and mode of the offending and the harm caused to the victim. For example, Band 1 comprises cases at the lower end of the spectrum of seriousness which feature no offence-specific aggravating factors (or the limited presentation of such factors) while Band 3 consists of offences of rape which by virtue of the number and intensity of the aggravating factors, present themselves as extremely serious cases of rape. They often feature victims with particularly high degrees of vulnerability and/or serious levels of violence attended with perversities (*Terence Ng* at [57]).

(B) THE "SENTENCING BANDS" APPROACH BASED ON HARM

108 The courts have also developed an alternative "sentencing bands" approach based on *harm* as a starting point. This harm-based "sentencing bands" approach has been adopted in cases involving offences where harm has been identified by the courts as the inherent mischief underlying the offence (*Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*") at [56]). This approach was adopted in cases involving the offence of voluntarily causing hurt under s

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323 of the Penal Code (see *Low Song Chye*) and cases involving the offence of voluntarily causing grievous hurt under s 325 of the Penal Code (see *BDB*).

109 The two-step analysis is modified such that the court utilises the seriousness of the injury caused to the victim(s) as an indicator of the gravity of the offence at the first step, and the court subsequently adjusts the sentence based on culpability and offender-specific factors at the second step (*BDB* at [55]).

110 While not based on harm, the Prosecution's proposed modified "sentencing bands" approach takes after this particular form of the "sentencing bands" approach by focussing at the first stage on a single factor (*ie*, the offender's culpability). The Prosecution submits that such an approach is appropriate since on the Exclusive Interpretation, "the range of injuries which would constitute 'hurt' is now much narrower in scope", and the offender's culpability thus becomes the primary determinant when considering the appropriate sentence.[18] This approach entails the application of the following three steps:[19]

(a) First, the court considers the indicative sentencing range based on the offender's culpability, which includes taking into account environmental factors that may have contributed to the incident. For instance, where the victim was jaywalking or speeding.[20]

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18 RFWS at para 13.

19 RFWS at paras 14–15.

20 RFWS at para 17.

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(b) Second, the court considers other offence-specific factors, including the degree of harm caused, to determine the indicative starting sentence within the said sentencing range.

(c) Third, the court considers offender-specific factors and the totality principle.

We will return to consider the Prosecution's proposed modified "sentencing bands" approach below.

(C) THE *TANG LING LEE* "SENTENCING BANDS" APPROACH

111 In *Tang Ling Lee v Public Prosecutor* [2018] 4 SLR 813 ("*Tang Ling Lee*"), the High Court adopted another modified "sentencing bands" approach for road traffic cases where an offender is convicted under s 338(*b*) of the Penal Code (*ie*, causing grievous hurt by a negligent act as to endanger human life or the personal safety of others). The court proposed at [25] a sentencing framework comprising three broad sentencing bands, within which the severity of an offence is determined based on: (a) the harm caused by the offence; and (b) the culpability of the offender. The degree of harm caused is taken to refer generally to the "nature and degree of the grievous bodily injury caused to the victim(s)". The degree of culpability is assessed based on the "degree of relative blameworthiness disclosed by an offender's actions and is measured chiefly in relation to the extent and manner of the offender's involvement in the criminal act (*ie*, the manner of driving)". In determining the appropriate sentence, the court is to undertake a two-step inquiry (at [32]). First, in order to derive the starting point sentence, the court identifies the sentencing band within which the offence in question falls, and also where the particular case falls within the applicable presumptive sentencing range, having regard to harm and culpability. At the second step, the court adjusts for offender-specific mitigating and

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aggravating factors, which may take the eventual sentence out of the applicable presumptive sentencing range.

112 While the *Tang Ling Lee* "sentencing bands" approach involves the use of a set of sentencing bands with indicative sentencing ranges to aid the court in its determination of the appropriate sentence, it is perhaps more akin to the *Logachev*-hybrid approach in substance as the assessment takes into account harm and culpability holistically to arrive at the indicative sentencing range.

The appropriate sentencing approach

The seriousness of an offence is based on equal consideration of harm and culpability

113 Before we determine the appropriate sentencing approach to adopt, an anterior question that has to be answered is whether *equal weight* should be accorded to the factors of harm and culpability in the sentencing analysis. The answer to this question has an impact on the choice and form of the sentencing framework.

114 In our judgment, it cannot be gainsaid that the factors of harm and culpability are equally important considerations in the sentencing analysis and greater emphasis should not be accorded to one over the other. We say this for two reasons.

115 First, as observed by the court in *Sue Chang* (at [102]), it is clear from the Parliamentary debates on the Amendment Bill that harm and culpability were both regarded as important factors in the sentencing analysis (see [53] above). There was no suggestion that one factor should be given more weight than the other. Mr Yong suggests that the sharper increase in the prescribed

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punishment where the manner of driving escalates from careless driving to dangerous driving, as compared to the increase in the prescribed punishment across the different tiers of harm caused by careless/dangerous driving, reflects Parliament's intention to accord greater emphasis to the offender's culpability.[21] We do not accept this suggestion. It is dangerous to speculate on the basis for which Parliament arrived at the prescribed sentencing ranges across the careless driving and dangerous driving provisions on one hand, and the sentencing ranges for the different tiers of harm on the other hand. Moreover, the difficulty with Mr Yong's point is more fundamental. Sections 64 and 65 of the RTA provide for discrete offences. While the offence under s 64 of the RTA is expressed to be more serious than that under s 65 of the RTA, adopting the language in *Public Prosecutor v Hue An Li* [2014] 4 SLR 661 ("*Hue An Li*") (at [34]–[36]), the distinction between careless driving and dangerous driving is a dichotomous difference in kind, rather than a non-dichotomous difference of degree. They are separate offences which warrant different starting points for sentencing. On the other hand, while the different levels of harm are exclusive based on type, the degree of severity exists on a continuum (see [74] above). It is thus difficult to draw any conclusion about Parliament's intention to accord greater emphasis on culpability based on a cursory comparison of the rate of increase of the prescribed punishments as done by Mr Yong.

116 Mr Yong also submits that the inherent mischief targeted by s 65 of the RTA is the act of careless driving by the offender in a manner and in circumstances that endanger the safety of other road users, and that this warrants greater emphasis being placed on culpability. He refers to the court's observations in *Public Prosecutor v Aw Tai Hock* [2017] 5 SLR 1141 at [36],

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21 YIC's submissions at para 34(b).

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where Steven Chong JCA held that for dangerous driving, "[t]he mischief and essence of the offence ultimately lies in the quality and actual manner of the driving". It is important to bear in mind that Chong JCA's observations were made *before* the 2019 RTA amendments came into effect and these observations did not eventually lead him to conclude that greater emphasis should be placed on culpability in the eventual sentencing analysis.

117 Second, we acknowledge that the degree of harm suffered by the victim in road traffic cases may often be dependent on factors outside of the offender's control and contemplation. It is settled law, however, that the question of whether a sentencing court can take into account the full extent of the harm caused by a particular criminal act is to be answered in the affirmative. In *Hue An Li,* the court held that the outcome materiality principle trumps the control principle as underpinning proportionality in sentencing (at [68] and [71]–[74]).

Evaluation of the sentencing approaches

118 On the basis that the punishment provisions in s 65 of the RTA are discrete and the Exclusive Interpretation of "hurt" applies, the Prosecution, Mr Yong and the appellants, Chua in MA 9113 and Erh in MA 9204, advocate for the adoption of a modified "sentencing bands" approach as outlined at [110] above. Chen in MA 9263 takes the same position only in relation to s 65(4)(*a*) of the RTA, and maintains his view that the *Sue Chang* sentencing framework should be endorsed in relation to s 65(3)(*a*) of the RTA. As Lim in MA 9150 and Raman in MA 9243 did not file further submissions in response to our queries during the hearing, we proceeded on the basis that they maintain their earlier positions advocating for a modified *Sue Chang* framework.

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119 In our judgment, it would not be appropriate to adopt the Prosecution's proposed modified "sentencing bands" approach for two main reasons. First, the Prosecution's sentencing approach places the emphasis of the sentencing exercise on the offender's culpability. This would result in an anchoring effect, failing to give sufficient weight to the harm suffered by the victim. As we emphasised above, harm and culpability are *equally important* considerations in the sentencing analysis, and it is not justifiable to place greater emphasis on the latter over the former. Second, and relatedly, we do not share the same concern as the Prosecution that an exclusive definition of "hurt" is necessarily much narrower in scope. As we will elaborate below at [124], the degree of harm can be assessed through various factors: (a) the nature and location of the injuries; (b) the degree of permanence of the injuries; and (c) the impact of the injuries. The confluence of these factors may result in varying degrees of "hurt" across a wide spectrum of severity. For instance, "hurt" could extend from superficial abrasions and lacerations to serious whiplash or head injuries (falling outside the definition of grievous hurt) which may require an extended period of hospitalisation.

120 We next turn to consider the *Sue Chang* sentencing framework based on the *Logachev*-hybrid approach. To be clear, we do not think there is anything wrong in *principle* in adopting the *Logachev*-hybrid approach for offences under ss 65(3)(*a*) and 65(4)(*a*) of the RTA. Indeed, the application of the modified *Tang Ling Lee* sentencing bands approach and the *Sue Chang* framework would likely result in the same or similar outcomes. In our view, however, it would be desirable to maintain a consistent sentencing approach for all of the punishment provisions in ss 64 and 65 of the RTA, to ensure theoretical and practical coherence. In this regard, we note that in *Wu Zhi Yong*, a sentencing bands approach was adopted for dangerous driving offences where

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no physical injury has been caused under s 64(2C)(*a*) of the RTA. This approach would also be appropriate for careless or dangerous driving offences resulting in death, given that there is only one possible type of harm that can be occasioned.

121 In our judgment, therefore, a modified *Tang Ling Lee* "sentencing bands" approach is most suited for careless driving offences causing grievous hurt and hurt punishable under ss 65(3)(*a*) and 65(4)(*a*) of the RTA.

122 As we shall elaborate below, this modified *Tang Ling Lee* "sentencing bands" approach retains the key substance of the *Tang Ling Lee* "sentencing bands" approach, while seeking to provide more specific guidelines to assist the sentencing courts in arriving at the appropriate sentence on the facts of each case. In particular, these specific guidelines aim to: (a) better aid the courts in their assessment of the extent of the harm suffered; and (b) provide more structured guidance on when a certain case would fall within a particular sentencing band.

The modified Tang Ling Lee "sentencing bands" approach

123 As in *Tang Ling Lee*, the sentencing framework comprises the same three broad sentencing bands reflecting the varying degrees of seriousness of the offence, which is determined on the basis of: (a) the harm suffered by the victim; and (b) the culpability of the offender. The difference lies in determining which indicative sentencing band a particular offence may fall within. In this regard, we find that a quantitative factors-based approach, where the indicative sentencing band is determined at the first step, based on the *number* of offence-specific harm and culpability factors is especially useful. To illustrate, "lesser harm" is caused, and the offender's culpability is deemed as "lower culpability"

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where at most one harm or culpability factor applies in respect of each category. "Greater harm" would be caused and the offender's culpability deemed as "higher culpability" where there are 2 or more harm and culpability factors respectively. That being said, we stress that this is a general guideline which is not to be applied mechanistically in every case. The foremost inquiry is to assess holistically whether the totality of the harm suffered by the victim should be classified as either "greater harm" or "lesser harm" and whether the offender's culpability considered as a whole should be classified as either "lower culpability" or "higher culpability".

(1) Harm factors

124 For harm, we distinguish the concepts of *primary* harm factors and *secondary* harm factors. In essence, primary harm factors are factors which pertain directly to the *bodily injury* suffered by the victim(s) in each case. These factors include:

(a) the nature and location of the injuries;

(b) the degree of permanence of the injuries; and

(c) the impact of the injuries.

125 This is in contrast to secondary harm factors which are unrelated to the physical injury suffered by the victim(s), but which nonetheless go towards the *extent of harm* caused in a particular case. These factors include:

(a) potential harm; and

(b) property damage.

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126 Under the legislative scheme in the RTA, it is clear that the primary proxy for harm is the physical injury caused to the victim(s). This is clear from the wording of the subsections which are divided according to the degree of *injury* suffered by the victim(s), *ie*, death, grievous hurt, hurt, and no injury. In our proposed framework, each *primary harm factor* would count as *one* offence-specific factor going towards harm. However, where a secondary harm factor presents itself in a significant manner, this should be considered in the determination of where the particular offence falls within the indicative sentencing band.

127 We elaborate further on the primary harm factors. Based on our survey of reported decisions, there are three broad primary harm factors which serve as key determinants of the severity of the harm caused. Considered together, they paint a holistic picture of the *extent of physical harm* caused to the victim which should be taken into account in the court's assessment of whether the harm caused constituted "greater harm" or "lesser harm". In this regard, it is also important for the court to contextualise its analysis within the specific type of harm caused to the victim. For instance, injuries classified as grievous hurt are by their nature serious. Yet, the breadth of the category allows for it to encompass a wide range of injuries of differing levels of severity. Thus, the evaluation of whether "greater harm" or "lesser harm" has been caused must be viewed in this context. The three broad primary harm factors are:

(a) *Nature and location of the injury*: This factor focuses on the precise nature and the location of the injury. This requires a consideration of: (i) the nature and severity of injury (*eg*, simple or complex and extent of injury, *etc*); (ii) the number of injuries; (iii) whether surgical intervention was necessary (or whether the injuries were treated conservatively); (iv) the disposition of the victim post-

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surgery (*eg*, general ward, high dependency or intensive care unit); and (v) the location of the injury (*eg*, vulnerable location).

(b) *Degree of permanence*: This factor considers whether the injury or injuries caused to the victim are permanent or transient. Permanent injuries include loss of a limb or permanent privation of the sight of either eye or the hearing of either ear, *etc*.

(c) *Impact of injury*: This factor contemplates the impact of the injury on the victim's quality of life. Here, considerations of: (i) the duration of stay in the hospital/rehabilitation centre; (ii) the duration of any hospitalisation/medical leave; (iii) the victim's ability to carry out daily tasks and maintain livelihood; and (iv) the duration of rehabilitation (if any), are relevant.

Nevertheless, as stated above at [123], it should be borne in mind that there may be cases where even if two or more primary harm factors apply, if they present themselves to a limited degree, the court may nevertheless consider that "lesser harm" had been caused based on a holistic assessment of the harm caused.

128 Another issue that has arisen in these appeals is the categorisation of potential harm – specifically, whether it goes towards harm or culpability. It is trite that potential harm ought to feature as a consideration in the court's exercise of its discretion in sentencing for RTA offences: *Wu Zhi Yong* at [36(a)]; *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 at [47]; *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [41]. However, the parties differ on how this factor should be categorised. Erh[22] and Mr Yong[23] take

[22] Appellant's submissions in MA 9204 at paras 51–53.

[23] YIC's submissions at para 2(b).

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the position that potential harm should be considered as a culpability-enhancing factor. On the other hand, the Prosecution and Chua[24] submit that potential harm ought to remain a facet of harm. The remaining appellants have not expressed any position on the issue of potential harm.

129 In our view, there is no reason to approach the classification of potential harm strictly. As the court observed in *Sue Chang*, how a sentencing judge takes into account factors going toward potential harm would turn on the precise facts of the case (at [90]). Potential harm refers to harm that was likely to have been caused to other road users but which ultimately did not eventuate. In *Wu Zhi Yong*, the High Court endorsed the pronouncement i*n Neo Chuan Sheng v Public Prosecutor* [2020] 5 SLR 410 at [22] that the level of potential harm may be assessed against facts such as the condition of the road, the volume of traffic or number of pedestrians actually on or which might reasonably be expected to be on the road at the relevant time, the speed and manner of driving, visibility at the relevant time, the type of vehicle, and any particular vulnerabilities (*eg*, a truck or car colliding into a motorcycle or pedestrian). It was observed that these relate to the circumstances of driving that could increase the danger posed to road users (*Wu Zhi Yong* at [36(a)]).

130 It would only be appropriate to have regard to potential harm if there was a sufficient likelihood of the harm arising and this in turn should be assessed in the light of the gravity of the harm risked: *Neo Ah Luan v Public Prosecutor* [2018] 5 SLR 1153 at [67]. In this connection, sentencing courts should be advised to expressly explicate the link between the facts relied on and the potential harm that may result. In particular, caution should be had in giving weight to submissions on potential harm which are based on hypothetical

[24] Appellant's submissions in MA 9113 at para 39

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scenarios inconsistent with the reality of the conditions at the time of the offence. To illustrate, if the offender was driving in a normally busy area but the evidence shows that no pedestrians or other vehicles were present at the time of the offence, short shrift should be given to any submission on potential harm. A sentencing court may take into account potential harm as being a factor going toward either harm or culpability in the sentencing process but exercise due caution to ensure that there is no double counting.

(2) Culpability factors

131 For culpability, we have taken reference from the reported decisions across the offences under s 337(*b*) of the Penal Code (negligent driving causing hurt), s 338(*b*) of the Penal Code (negligent driving causing grievous hurt), s 65(4)(*a*) of the RTA (careless driving causing hurt) and s 65(3)(*a*) of the RTA (careless driving causing grievous hurt) in arriving at the relevant factors for culpability. We set out a non-exhaustive list of factors which each constitute 1 offence-specific factor going towards culpability:

(a) *Any form of dangerous driving behaviour*. For instance:

(i) speeding;

(ii) driving against traffic;

(iii) driving when not fit to drive;

(iv) driving under the influence of alcohol or drugs;

(v) sleepy driving;

(vi) driving while using a mobile phone;

(vii) swerving in and out of lanes;

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(viii) using a vehicle in a dangerous fashion; and

(ix) street racing.

(b) *Flouting of traffic rules and regulations*. For instance:

(i) failing to stop at a stop line;

(ii) failing to conform to traffic signal;

(iii) not forming up correctly to execute a turn;

(iv) changing lanes across a set of double white lines/chevron markings; and

(v) making an illegal U-turn/right turn.

(c) *High degree of carelessness*: This is demonstrated where there was a prolonged or sustained period of inattention (as opposed to a momentary lapse of attention), and where the offender was deliberately cavalier about certain mitigatable risks. As stated in *Sue Chang* at [95], it would also be relevant to consider the extent to which the offender's distraction was avoidable and the extent to which the offender's misjudgment was reasonable.

132 We should highlight that in some cases, the lower courts have inappropriately classified certain conduct as exhibiting a *high degree of carelessness*, even though the offending acts were manifestations of the basic elements of the careless driving offence. For example, where an offender failed to keep a safe distance from the vehicle in front or failed to take proper care when changing lines or executing a discretionary right turn. Certainly, *something more* is needed in order to establish greater culpability of the offender. For example, in *Public Prosecutor v Chua Teck Huat*

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[2022] SGDC 65, the court found that the offender exhibited a moderate degree of carelessness because he had made a discretionary right turn without keeping a proper lookout for vehicles with the right of way. With respect, this merely reflected the very essence of a careless driving charge and without more, the offender could not be said to have had exhibited a higher degree of carelessness.

133 Finally, in assessing the offender's culpability, it is also important for the sentencing court to be alive to the possibility of contributory negligence and the extent to which this affects the offender's blameworthiness. The conduct of the victim or third parties *may* in certain circumstances be considered at this juncture in the calibration of the offender's culpability. This was elaborated on in *Guay Seng Tiong Nickson v Public Prosecutor* [2016] 3 SLR 1079 ("*Nickson Guay*"). Following a survey of the positions in several foreign jurisdictions, the court in *Nickson Guay* concluded that in Singapore, "where the conduct of the victim or a third party has a *direct bearing on the culpability of the offender*, it should, in keeping with the principle of proportionality, be taken into account when determining the sentence to be meted out" [emphasis added] (at [65]). In the context of careless driving offences, the moral culpability of the offender is usually linked to the extent that the offender's driving had fallen below the standard of a reasonably competent driver who ought to have exercised due care and attention and reasonable consideration to other road users. This can in some circumstances be affected by the behaviour of the victim or a third party (at [65]). However, the fact that the negligence (or otherwise) of the victim or a third party was a contributory cause of the accident should not, without more, be taken into account as a mitigating factor (at [68] and [70]).

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The sentencing framework for careless driving offences causing grievous hurt punishable under s 65(3)(a) of the RTA

134 In summary, we apply the following sentencing framework for careless driving offences causing grievous hurt punishable under s 65(3)(*a*) of the RTA where the offender elects to claim trial. A plea of guilty by the offender may be considered a mitigating factor in accordance with [134(d)] below:

(a) First, the court is to identify the number of offence-specific factors under the broad categories of "harm" and "culpability".

(b) Second, based on the *number* of offence-specific factors present, the court is to determine whether the harm caused is "lesser harm" or "greater harm" and whether the culpability of the offender is "lower culpability" or "higher culpability" and thereafter arrive at the sentencing band the offence falls within. To recapitulate, "lesser harm" is caused, and the offender's culpability is deemed as "lower culpability" where there are 0–1 harm or culpability factors respectively. "Greater harm" is caused, and the offender's culpability is deemed as "higher culpability" where there are 2 or more harm or culpability factors respectively.

Band	**Circumstances**	**Sentencing range**
1	Lesser harm and lower culpability	Fine and/or up to 6 months' imprisonment
2	Greater harm and lower culpability Or Lesser harm and higher culpability	6 months' to 1 year's imprisonment

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3	Greater harm and higher culpability	1 to 2 years' imprisonment

(c) Third, after determining the indicative sentencing band that the offence falls within, the court should identify an indicative starting point sentence within that range, taking into account: (a) all the primary harm factors and the culpability factors identified; and (b) the secondary harm factors (see [125] above).

(d) Fourth, the court is to make adjustments to the starting point to take into account the usual gamut of offender-specific aggravating and mitigating factors.

135 For completeness, we add that it is important to bear in mind that any term of imprisonment imposed may also be accompanied by a fine of up to $5,000, if appropriate. Thus, the courts should remain "alive to [the] possibility of imposing such a combination of punishments in order to properly take into account the full sentencing range prescribed by Parliament" (see *Sue Chang* at [99]).

136 Based on our review of the reported decisions involving careless/negligent driving offences, it is difficult to observe a discernible pattern on when the custodial threshold was crossed. An added complication lies in the above issue regarding classification – that is, in some cases "standard" non-aggravated careless driving behaviours were incorrectly found to be highly culpable (see [132] above).

137 To our minds, with reference to our proposed sentencing bands for s 65(3)(*a*) of the RTA (see [134(b)] above), the custodial threshold would typically be crossed where there are 2 or more offence-specific harm and/or

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culpability factors present. Therefore, for Band 1 cases, fines would ordinarily be reserved for cases where 0–1 offence-specific harm and/or culpability factors are present.

138 Finally, we note that a mandatory 5-year disqualification period applies for offences punishable under s 65(3) of the RTA, "unless the court for special reasons thinks fit to not order or to order otherwise": s 65(6)(*d*) of the RTA. In this regard, we refer to the recent case of *Lee Shin Nan v Public Prosecutor* [2023] SGHC 354, where it was held (at [79]) that special reasons will generally be found only if the court is satisfied that the offender drove in circumstances that reasonably suggest:

(a) it was necessary to do so in order to avoid other likely and serious harm or danger; and

(b) there was no reasonable alternative way to achieve this end.

The sentencing framework for careless driving offences causing hurt punishable under s 65(4)(a) of the RTA

139 A similar sentencing framework should be adopted for careless driving offences causing hurt punishable under s 65(4)(*a*) of the RTA, where the offender elects to claim trial. A plea of guilty by the offender may similarly be considered as a mitigating factor in accordance with [134(d)] above. However, the sentencing ranges for each sentencing band should be calibrated accordingly:

Band	**Circumstances**	**Sentencing range**	**Driving disqualification range**

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1	Lesser harm and lower culpability	Fine	Up to 12 months'
2	Greater harm and lower culpability Or Lesser harm and higher culpability	Fine and/or up to 2 months' imprisonment	12 to 24 months'
3	Greater harm and higher culpability	Fine and/or up to 6 months' imprisonment	24 to 48 months' (or longer)

140 With reference to our proposed sentencing bands for s 65(4)(*a*) of the RTA, the custodial threshold would typically be crossed where there are 2 or more offence-specific harm and/or culpability factors present. We recognise that in so stipulating, the custodial threshold is *necessarily* crossed in both Bands 2 and 3 as both "greater harm" and "higher culpability" are established where there are 2 or more harm or culpability factors respectively. However, at the same time, Bands 2 and 3 also provide for the possibility of a fine being imposed. In our view, it is entirely justifiable for the custodial threshold to be crossed where an offence falls within both Bands 2 and 3. Nonetheless, the court may consider imposing a fine instead where the *seriousness* of the harm and culpability factors as a whole are assessed not to warrant the imposition of a custodial sentence.

141 Unlike offences punishable under s 65(3)(*a*), a mandatory period of disqualification does not accompany offences punishable under s 65(4)(*a*). Instead, the court has the discretion to decide whether to impose a disqualification order under s 42(1) of the RTA. We agree with the Prosecution that a composite framework which provides for the length of imprisonment and/or the quantum of fine and the length of the disqualification period is

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appropriate (see [139] above). It was observed in *Edwin s/o Suse Nathen v Public Prosecutor* [2013] 4 SLR 1139 ("*Edwin Nathen*") that the two components of the overall sentence: a fine and/or imprisonment term and disqualification generally are not to be regarded as mutually compensatory (at [13]). While the different types of punishment are not fungible, there is a positive correlation between the length of the imprisonment term and/or quantum of the fine imposed and the period of the disqualification ordered. This direct relationship arises from the overlapping considerations of harm and culpability underlying the determination of the length of imprisonment or quantum of fine, and the length of the disqualification period.

142 Indeed, the present RTA provides for a tiered structure which calibrates the length of disqualification according to the type of hurt caused and certain offender-specific attributes reflecting higher culpability (*ie*, whether the offender is a repeat, serious or serious repeat offender) under s 65(6) of the RTA. In certain cases, however, we note that it may be necessary to impose a longer disqualification period than the prescribed range in the specific band where the legislative aims behind the imposition of a disqualification order call for this period.

143 We state briefly the legislative purpose behind the imposition of a disqualification order for road traffic offences. The disqualification order serves to meet three objectives: punishment, protection of the public and deterrence: *Edwin Nathen* at [13] and *Kwan Weiguang v Public Prosecutor* [2022] 5 SLR 766 ("*Kwan Weiguang*") at [59]. These correspond loosely to the sentencing principles retribution, prevention and deterrence respectively.

144 Among the objectives, the most important is protection of the public because the removal of the offender from public roads prevents future harm that

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the offender may cause: *Public Prosecutor v Ong Heng Chua and another appeal* [2018] 5 SLR 388 ("*Ong Heng Chua*") at [61]; *Kwan Weiguang* at [60]. In this connection, the court observed in *Ong Heng Chua* that greater weight should be placed on the factors such as the offender's culpability in the commission of the offence and his driving record, which reflect how much of a danger the offender poses to other road users (at [61]).

145 A sentencing court should link the recognised aggravating or mitigating factor with the applicable sentencing rationale(s): *Edwin Nathen* at [26]. Conduct which has no bearing in itself on the underlying rationale for the disqualification order should not be taken into account. Ultimately, the imposition of a disqualification order seeks to address dangers to road users by the offender's continued participation as a driver. In this respect, we agree with the High Court in *Kwan Weiguang* that the courts should not consider the offender's need to retake the driving aptitude test past the 12-month threshold when deciding on the appropriate disqualification period to impose (at [80]). The retest is to ensure competence and is not meant as an "additional punishment" to be imposed for the offender to relearn safe driving. Section 43(1)(*b*) of the RTA is not meant to be a punitive provision. It is therefore not relevant for the court to consider the *consequential effect* of the imposition of a 12-month or longer disqualification period.

146 In sum, the sentencing framework devised for s 65(4) offences reflects the proportional relationship between the fine and/or imprisonment term imposed and the disqualification period. There is no dispute that the factors which are relevant for the determination of the quantum of the fine and/or the length of the imprisonment term overlap and influence the factors pertinent to the calibration of length of the disqualification period. The length of the disqualification period is ultimately within the discretion of the sentencing

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courts, on the application of existing sentencing considerations going towards the imposition of a disqualification order. It may be appropriate in some cases for the length of disqualification imposed on the offender to depart from the range within the specific band, and the sentencing courts should be clear in their reasoning the considerations for the departure.

SDO as an alternative to traditional sentences for offences of careless driving

147 Apart from the traditional sentencing options outlined in the sentencing frameworks above, another legal issue that has arisen for our consideration in the present appeals is the circumstances in which an SDO would be appropriate as an alternative sentencing option for offences of careless driving under s 65 of the RTA. In MA 9204, Erh urges this court to consider imposing a 2-week SDO as an alternative to substituting his custodial sentence of 10 weeks' imprisonment with a fine. In light of his arguments, we take this opportunity to expound on the general principles concerning the imposition of a SDO and when such a sentencing option may be appropriate for offenders convicted under s 65 of the RTA.

148 SDOs are part of a suite of community-based sentences ("CBS") which serve as alternative sentencing options for the courts to have recourse to in suitable cases. Pursuant to s 348(1) of the CPC, SDOs may be imposed by the courts in the following circumstances:

> **Short detention orders**
>
> **348.**—(1) Where an offender who is 16 years of age or above is convicted of an offence, and if the court by or before which he or she is convicted is satisfied 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 make a short detention order requiring the offender to be detained in prison for a period which must not exceed 14 days.

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[emphasis added]

149 The CBS framework was first introduced in the Criminal Procedure Code Bill (Bill No 11/2010) (the "CPC Bill"). During the Second Reading of the CPC Bill, Minister for Law and Second Minister for Home Affairs, Mr K. Shanmugam ("Minister Shanmugam") emphasised that the key rationale of such a framework is to provide more flexibility to the courts in targeting offences and offenders traditionally perceived to fall at the rehabilitative-end of the spectrum (*Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422). These included: regulatory offences, offences involving younger accused persons and persons with specific and minor mental conditions (*Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 422). Specifically, in relation to SDOs, Minister Shanmugam noted that (at col 426) the limited maximum detention period of 14 days ensures that SDOs are less disruptive and stigmatising than longer incarceration periods.

150 Most recently, during the Second Reading of the Amendment Bill on 8 July 2019, the Second Minister for Home Affairs, Minister Teo contemplated that "short detention orders can apply to RTA offences … if the offence and offender meet the requirements set out under the Criminal Procedure Code … One example is the offence of Careless Driving as well as first-time Driving Under Influence offenders" (*Singapore Parliamentary Debates*, *Official Report* (8 July 2019), vol 94).

Discussion of SDOs in the case law

151 In *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207, See Kee Oon JC (as he then was) considered a number of precedents where SDOs were ordered. He concluded as follows (at [40]):

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> The important point that emerges from the above authorities is that the suitability of the various types of CBS orders depends on the type of offender and the type of offence. This calls for an open-textured assessment that is highly contextualised and the court must have regard to all the facts of the case. Some types of CBS may have greater relevance in the cases which involve youthful offenders since such offenders are often seen to have greater rehabilitative capacity. Nevertheless, I did not think that offenders over the age of 21 should *ipso facto* be denied the opportunity to be considered for CBS. The rehabilitative aim does not automatically recede into the background once the offender reaches 21 years of age. *In every case, the particular circumstances of the offence and the offender in question must be carefully scrutinised and evaluated to determine whether rehabilitation should be given prominence notwithstanding any countervailing need for deterrence, retribution or prevention*: *Kalaiarasi* ([23] *supra*) at [39]. *Thus, the appropriateness of CBS is a question which turns on all the relevant circumstances of each case, including the offence and offender in question*. [emphasis added]

152 In the subsequent case of *Public Prosecutor v Teo Chang Heng* [2018] 3 SLR 1163, See J (as he then was) emphasised (at [12]) that while the *primary focus of CBS options is rehabilitative*, SDOs can serve the purpose of deterrence as the offender "will be incarcerated pursuant to a SDO and will be deprived of his liberty" (at [15]).

153 In every case, the particular circumstances of the offence and the offender in question must be scrutinised to determine whether rehabilitation should be given prominence notwithstanding any countervailing need for deterrence, retribution or prevention (*Kalaiarasi d/o Marimuthu Innasimuthu v Public Prosecutor* [2012] 2 SLR 774 at [39]).

154 From a survey of the cases following the amendments to the RTA, SDOs have not been imposed with reasoned consistency. As we explain below, the imposition of a SDO for driving offences necessitates a consideration of all the

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factors of the case to determine if rehabilitation takes precedence over the other sentencing principles (*ie*, deterrence, retribution and prevention).

Guidelines on appropriateness of SDO as a sentencing option for s 65 RTA cases

155 It is apparent from the Parliamentary debates that in determining whether a SDO is appropriate in a particular case, two key factors must be considered: (a) the type of offender; and (b) the nature of the offence. This is also reflected in the language of s 348(1) of the CPC (see [148] above). We consider each of these factors in turn.

156 Bearing in mind that the primary sentencing principle animating SDOs is rehabilitation, where the nature of the offence is so serious based on the level of harm caused and/or the culpability of the offender such that deterrence and retribution comes to the fore, a traditional term of imprisonment may nonetheless be more appropriate. While a SDO may be imposed for the same duration as a term of imprisonment (*ie*, a two-week SDO and a two-week term of imprisonment), it is important to bear in mind that these are two qualitatively different sentencing options targeted at giving weight to different sentencing principles. Put simply, a SDO is *not* functionally equivalent to a short term of imprisonment; they are not fungible sentencing options.

157 We should emphasise that the fundamental inquiry turns on a fact-specific assessment of the nature of the offence and the type of offender.

Application of the law to the facts

158 Finally, we turn to address the present appeals.

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159 We earlier concluded that the Prosecution has no discretion to select the punishment provision under which an offender may be sentenced (see [85]–[87] above). Specifically, the Prosecution is unable to proceed on a charge reflecting a *lower* level of harm from what is disclosed on the facts stated in the charge (*ie*, reduce a charge). The discrete nature of the categories of harm in the punishment provisions requires that the choice of the relevant provision be determined purely by a factual finding of the injuries suffered by the victim and a classification of the level of harm they fall under in accordance with the four harm categories in s 65 of the RTA. Given this, it is apparent that the appellants in MA 9263, MA 9113, MA 9150, and MA 9243 were sentenced under the *wrong* sub-provisions of s 65 of the RTA. In these four appeals, the appellants pleaded guilty to careless driving causing hurt offences punishable under s 65(4)(*a*) of the RTA, notwithstanding the fact that the victims in all these cases suffered some form of grievous hurt. Accordingly, the appellants should rightly have been punished under s 65(3)(*a*) of the RTA:

(a) In Chen's case, the victim had suffered a right acromioclavicular joint dislocation which constitutes a dislocation of a bone, amounting to grievous hurt under s 320(*g*) of the Penal Code.

(b) In Chua's case, the victim sustained, *inter alia*, left-sided facial fractures (minimally displaced) with fractures seen involving left orbital lateral wall and floor (with orbital extraconal haematoma), left maxillary sinus lateral wall and left frontal sinus outer table. These fractures were also associated with left eye indirect traumatic optic neuropathy, subconjunctival haemorrhage and commotio retina. These fractures amount to grievous hurt under s 320(*g*) of the Penal Code.

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(c) In Lim's case, the victim was diagnosed with left hip intertrochanteric fracture and left knee tibia plateau fracture. These fractures amount to grievous hurt under s 320(*g*) of the Penal Code.

(d) In Raman's case, the victim sustained, *inter alia*, left distal tibia fibula open fracture. This fracture amounts to grievous hurt under s 320(*g*) of the Penal Code.

160 We are of the view that the doctrine of prospective overruling should not be invoked in the present cases. It cannot be said that the Prosecution's practice of reducing charges for road traffic offences under the RTA is entrenched, as the RTA amendments only took effect in November 2019.

161 Given our view on the above, we have invited the parties to address us on: (a) whether Chen's, Chua's, Lim's and Raman's convictions should be set aside; and (b) whether the underlying charges should be amended and if so, whether Chen's, Chua's, Lim's and Raman's pleas should be taken in respect of the amended charges.

162 For the avoidance of doubt, our decision at [85]–[87] does not affect Erh's appeal as he was properly sentenced under s 65(3)(*a*) of the RTA. We therefore turn to consider his appeal.

Erh's appeal in MA 9204

163 To recapitulate, the appellant in MA 9204, Erh, was driving his motor car along the PIE towards Tuas. Due to heavy traffic, the car travelling in front of Erh braked and came to a stop. Consequently, Erh abruptly switched lanes, failing to keep a proper lookout. This led to a collision between Erh's motor car and the victim who was travelling on his motorcycle. Erh pleaded guilty to one

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count of driving without due care and attention causing grievous hurt under s 65(1)(*a*) punishable under s 65(3)(*a*) of the RTA and s 65(6)(*d*) of the RTA. He was sentenced to 10 weeks' imprisonment and the minimum 5 years' DQAC (see [37]–[42] above). In this appeal, Erh appeals against his sentence (excluding the disqualification period) only.[25] He urges the court to substitute his custodial sentence of 10 weeks' imprisonment with a fine of $4,000.[26] In the alternative, he submits that a 2-week SDO would be an appropriate sentencing option.[27]

164 We deal first with Erh's alternative submission for his sentence to be substituted with a 2-week SDO. At the time of sentencing, the offender was 30 years old (and 29 years old at the time of the offence), and a working adult. Notwithstanding his early plea of guilt and his clean driving record, we are of the view that rehabilitation did not outweigh the principles of deterrence and retribution in the present case given the nature of the present offence, in particular, the serious injury suffered by the victim. We therefore do not find it appropriate to substitute his sentence for an SDO.

165 We turn next to consider the question of whether the custodial threshold was crossed such as to necessitate a term of imprisonment as opposed to a fine. At the time Erh was sentenced, the *Sue Chang* framework was the applicable framework. The district judge held that the harm caused was at the low end of serious harm and the culpability of the offender was at the higher end of low. In relation to harm, the victim suffered from: (a) a traumatic amputation of the right little finger; and (b) a right-sided clavicle fracture. He was given

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25 Appellant's submissions in MA 9204 at para 4.

26 Appellant's submissions in MA 9204 at para 5.

27 Appellant's submissions in MA 9204 at para 6.

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hospitalisation leave of 58 days. The victim's medical report dated 6 September 2021 from TTSH states that "[i]t is too early to comment on whether … he will suffer any permanent hand disability (as he has yet to fully recover from surgery) but he will likely be able to return to work".[28] Erh thus submits that there is no evidence before the court of any permanent injury to the victim which severely affects his daily living and/or ability to work.[29] It is undisputed that permanent injury was caused to the victim, although there is no evidence before us that the victim would suffer from any permanent hand disability as a result and he was assessed to be likely to be able to return to work. Therefore, in our view, taking into consideration also the victim's right-sided clavicle fracture, the damage caused to his motorcycle and the potential harm arising from his abrupt lane-change on the expressway during peak hour, this would place the harm caused in the higher end of the "low" category. This is so bearing in mind that the range of injuries classified as grievous hurt is broad and are by their nature serious (see [127] above).

166 Erh's culpability is low. His offending conduct in the present case was simply a manifestation of the basic elements of the careless driving offence. From Erh's in-car camera footage, it is clear that he failed to keep a proper lookout when the car in front of him began to slow down and therefore failed to apply his brakes in time. In order to avoid colliding with the vehicle in front of him, he abruptly chose to change lane without checking his blind spot.

167 At the second step, based on our determination of the level of harm and culpability of the offence, we proceed to identify the indicative sentencing range in the proposed sentencing matrix. As we concluded that the harm caused was

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28 ROP in MA 9204 at p 54.

29 Appellant's submissions in MA 9204 at para 79.

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at the higher end of low and Erh's culpability was low, the indicative sentence ought to be a fine based on the *Sue Chang* framework.

168 At the third step, we identify the appropriate starting point. In this regard, we are of the view that an indicative starting point of a fine of $5,000 (the maximum quantum of fine) is appropriate.

169 At the fourth step, we take into account the relevant offender-specific factors in order to make adjustments to the starting point. Erh pleaded guilty and readily co-operated with the authorities and mitigating weight should be accorded to this. In the premises, we are of the view that the sentence of 10 weeks' imprisonment imposed by the district judge below is manifestly excessive. Accordingly, we allow the appeal in MA 9204 and substitute Erh's sentence of 10 weeks' imprisonment with a fine of $4,000. The mandatory disqualification period of 5 years will commence on the date of his conviction, 11 October 2022, excluding the period from 9 November 2023 to 14 May 2024, during which Erh was in possession of his driving licence.

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Conclusion

170 For the reasons above, we allow the appeal in MA 9204 and substitute Erh's sentence of 10 weeks' imprisonment with a fine of $4,000. We will now hear parties' submissions on the appeals in MA 9263, MA 9113, MA 9150 and MA 9243 on the matters at [161] above.

171 In closing, we record our gratitude to Mr Yong for the assistance that he has rendered us.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Vincent Hoong
Judge of the High Court

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