

COUNTERFEIT GOODS AND CONSUMER TRUST: A CASE REVIEW OF ANG SENG HO V PUBLIC PROSECUTOR [1991] 3 MLJ 334

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Article history:

Submission date: 1 September 2019
Received in revised form: 30 October 2019
Acceptance date: 7 November 2019
Available online: 10 December 2019

Keywords:

Halal Forensics, Trade Descriptions Act, Traceability, Food Fraud, Toyyiban.

Funding:

This research did not receive any specific grant from funding agencies in the public, commercial, or non-profit sectors.

Competing interest:

The author(s) have declared that no competing interests exist.

Cite as:

Salahuddin, U. N. (2019). Counterfeit goods and consumer trust: A case review of Ang Seng Ho v Public Prosecutor [1991] 3 MLJ 334. *INSLA E-Proceedings*, 2(1), 13-19.



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ABSTRACT

This paper offers a thorough legal and forensic examination of the significant Malaysian case of Ang Seng Ho v Public Prosecutor [1991]. This research aims to provide an evaluation of the implications of this significant case on consumer protection and the modern supply chain from a legal and forensic point of view. In particular, the present study focuses on the High Court decision on the issue of the distribution of fake foods under the perspective of the Halal Forensic Pyramid. From a legal point of view, the paper thoroughly discusses the interpretation of Section 3(1)(b) of the Trade Descriptions Act 1972. Aside from civil statute law, the research links the 1991 legal precedent together with today's Halal industry practices through the assessment of the case using five key forensic criteria. It discusses the breach of Shariah Law through commercial deception, the fundamental breach of absolute traceability in Halal Management, as well as the importance of applying the Standard Act in criminalizing Halal fraud. In addition, it emphasizes the importance of the Halal Science in proving the actus reus of fraud. Finally, it examines the significant health implications of fraudulent agricultural products, thereby proving that food fraud is the direct violation of the Halalan Toyyiban principle required by Islam.

Introduction

Food safety and the issues associated with it have become highly important emerging fields in the food supply chain and have gained substantial attention from different research institutions, government, and regulatory authorities (Ayza & Belete, 2015). The research conducted by Sholahuddin et al. (2025) revealed that more than 10% of foods products in the world contain fraudulent substances such as counterfeit ingredients, false labelling, and illicit mixing of ingredients as per Food Fraud Database 2022. It is clear that maintaining the integrity of the supply chain is essential to counter the grave dangers posed by food fraud and counterfeit distribution.

This paper is a critical evaluation of the seminal case decision of Ang Seng Ho in the High Court, which laid some of the most important legal precedents in terms of statutory interpretation and strict liability doctrine. The appellant was charged under Section 3(1)(b) of the TDA 1972 of supplying 230 packets of imitation groundnuts with the fictitious trade description of the well-renowned “Thumb Brand Ngan Yin” factory. The core of this case is that the appellant tried to absolve himself of any criminal liability and placed the blame on an unidentified third-party supplier with the claim that he had no knowledge of the counterfeit groundnuts.

Apart from its significance in civil law, the judicial reasoning in the reported case is extremely pertinent for understanding the current food certification process based on the multi-disciplinary approach of the Halal Forensic Pyramid. Hence, the purpose of this assignment is to analyse the legal arguments and decision reached by the court in the case of Ang Seng Ho while comparing it to all five main categories of Halal Forensics, namely, shariah law, halal management, standard acts, halal science, and health implications. Through this analysis, it will be possible to see how historic civil rulings provide a crucial legal foundation for fighting against modern day fraud syndicates.

Fact of the Case

On 30 January 1981, inspection officers of the Ministry of Trade raided the premises of a shop called Chop Lam Hong in Pontian, Johore. In the raid, 250 packets of counterfeit ground nuts were found and confiscated from the premises.

The packets of groundnuts seized by the raiders were falsely packed to resemble that of the renowned groundnuts produced by “Thumb Brand Ngan Yin Groundnut Factory” (Cap Tangan) factory based in Kampar, Perak. Of the 250 packets of ground nuts seized, 230 packets were on display for distribution to the public.

Under Section 3(1)(b) of the Trade Descriptions Act 1972, the owner of the premises, Ang Seng Ho (the Appellant), was prosecuted in the Magistrates Court, for supplying goods with a false trade description.

During the trial, the Appellant pleaded ignorance as he contended that he was only an innocent retailer who did not know that the peanuts were counterfeit, because he had bought them from another local supplier.

For purposes of tracing the sources of the fake foods, investigations were conducted through a complex web of middlemen. The Appellant claimed that he had bought the goods from Chai Hong Seng in Pontian, who had bought the same from Hock Seng Malaysia Trading Sdn Bhd in Malacca. Further investigations found out that Hock Seng Malaysia Trading Sdn Bhd had bought the said goods from Aik Lee Heng Trading. Ultimately, it was found out that the chain of supply ended in Hiap An Trading in Johore Bahru, which was discovered as entirely a ‘ghost’ company.

Legal Issue and Arguments of the Parties

The issue here is whether the offense of applying a false trade description under Section 3(1)(b) of the Trade Descriptions Act 1972 is an offense of strict liability.

The Appellant claimed that there was lack of mens rea. He argued that, in most cases, criminal law demands the proof from the prosecution that the defendant had intent to commit the fraud. As he did not have any intention to do so, he argued he should not be punished for a counterfeiting crime as he was just an innocent retailer. However, the Public Prosecutor argued that the TDA 1972 enacted by Parliament

was social welfare legislation. Its primary legislative intent is the protection of consumers from commercial fraud and counterfeit goods. Because consumer protection is the paramount objective of the Act, the courts must interpret Section 3 as an offense of strict liability. Moreover, under section 24(1) and section 24(3) of the Act, which the appellant tried to rely on, it literally used the word ‘is for the person charged to prove’. The use of this statutory wording suggested that the offence under the Act is one of strict liability. The very fact that the law places the burden of proof onto the accused, forcing them to establish their lack of criminal intent, makes it evident that there is a presumption of guilt on account of the actus reus alone.

The second issue is whether the Appellant is legally entitled to rely on the statutory defenses of blaming a third party under Section 24 of the Act.

The Appellant tried to rely on Section 24(1) of the Act, which allows an accused person to seek an acquittal if they can prove the offense was due to the ‘act or default of another person’. In this case, he tried to put the blame on his supplier, Chai Hong Seng, arguing that it was the supplier’s fault for distributing the counterfeit groundnuts to his retail premise. In rebuttal, the prosecutor argued that the appellant was legally blocked from utilizing this defense due to a fatal procedural failure. The Appellant failed to comply with the requirement under Section 24(2), which required an accused person to serve a mandatory written statutory notice to the prosecution at least 7 days before the hearing.

The third issue is whether the Appellant had exercised “reasonable diligence” to ascertain the authenticity of the food products before selling them.

In the Appellant’s defense, he argued that he had fulfilled the criterion of “reasonable diligence” just by placing an order from a well-known local middleman. His reason was that he placed the order for a renowned brand, and it is unrealistic to demand a small shopkeeper to conduct scientific tests on each packet of peanuts. The Public Prosecutor’s counterargument was that blindly trusting the middleman is not what “reasonable diligence” means. For securing public supply chain, the seller should actively do something like insisting on invoices, verifying the authenticity of the distributor through direct contact with the factory at Kampar, or checking for official certification marks.

Decision of the Case

Upon careful consideration of all the evidence notes submitted to the Magistrate’s Court and submissions made by both sides, James Foong JC, presiding in the High Court completely dismissed the appeal made by the appellant. The judgment upheld the verdict and sentence issued by the Magistrate.

In rendering the decision, the High Court set a clear precedent on the question of the statutory interpretation of the law on consumer protection. In essence, the Court formally declared that the offense of Section 3(1)(b) of the Trade Descriptions Act of 1972 is a strict liability offense. The learned Judge was of the view that the particular wording in Sections 24(1) and 24(3), wherein the burden of proof is placed on the “person charged to prove” his or her innocence, shows that the legislature has deliberately eliminated the necessity for the prosecution to prove mens rea of the defendant.

Addressing to the Appellant’s efforts of seeking to attribute liability to his supplier, the Court judged him strictly based on whether he met the procedural requirements. The Judge agreed that the Appellant was precluded from relying on the defense under Section 24(1) of the Act. This is because Section 24(2) states that it is mandatory to issue a written notice of intention to claim default of another person to the prosecution at least seven days prior to the hearing. In light of the fact that the Appellant totally failed to satisfy the mandatory condition, the Court rejected his defense.

The main issue regarding the judgment of the High Court is the determination of the standard of care of the Appellant. In this regard, the Court found that the Appellant was unable to meet the second requirement of the statutory defense as provided in Section 24(3). It stipulates that it must be proven that the accused cannot ascertain the fraud even if there is “reasonable diligence”. This is because James Foong JC stated explicitly that “it is not sufficient for the appellant to merely state that he did not know that the groundnuts were not genuine when he requested the genuine one”. The Court set a higher standard of care, noting that a proper business operator should undertake “further steps or enquiries from his immediate supplier” on the validity of the goods supplied when they deliver. In light of the fact that the

notes of evidence showed the negligence of the Appellant in failing to conduct any background inquiries on the legitimacy of the goods, his actions were unacceptable.

Issues Involving Halal Forensic in Counterfeit Food Products and Supply Chain Integrity

Shariah Law

In Islam, business ethics is part of faith and worship, every economic activity is part of devotion to Allah SWT. Thus, the ethical standards that are established in Islam are superior as they take into account not only the legal and social considerations, but also the spiritual aspects (Sholahuddin et al., 2025). The basic components of the Islamic economic ethics are *sidq* (truthfulness), *amanah* (integrity), and *‘adl* (justice). According to the Prophet Muhammad: *“Whoever cheats people does not belong to Muslims.”* (Sunan Abu Dawud). In this context, the actions of the supply chain network and the Appellant in the case of Ang Seng Ho v PP constitute a violation of the fundamental principles of Islam. By selling fake groundnuts through the deception of using the well-known “Thumb Brand Ngan Yin” as a label, the merchants engaged in the practice of *tadlis* and *gharar*, namely fraudulent concealment of the true essence of a product and commercial fraud. This means the transaction lacks *sidq* and *amanah* since the buyers unknowingly spend their hard-earned money on fake commodities.

Furthermore, from the perspective of Halal Forensics, this act is a direct violation of the halal *Toyyiban* requirement of the food. Since the peanuts come from an anonymous and fictional company known as Hiap An Trading Company and not the actual Kampar company, the purity of how the peanuts were handled, processed, traded, and even transported is totally unknown. It is thus obvious that the High Court’s strict punishment of the Appellant is fully in line with the *Maqasid Shariah*, which include *Hifz al-Mal* (protection of property) from fraudulent dealings and *Hifz al-Nafs*, protection of health from harmful food products.

Halal Management

In the contemporary halal industry, Halal Management is required because of the rise in the number of Muslims around the world, which has led to increased demand for halal food products (Masudin et al., 2022). This is achieved through the strict Halal Assurance System (HAS). One of the main pillars of HAS is the absolute traceability system. Traceability can be defined from various perspectives. As per the definition by the International Organization for Standardization (ISO), traceability is the ability to follow the movement of a product through certain stages of production, processing, and distribution (Masudin et al., 2022).

For a product’s halal status to be guaranteed, the integrity of the chain and its monitoring are essential to apply to each partner of the supply chain, from suppliers to end-users, so that users can be satisfied with the authenticity of the halal products (Nugroho et al., 2024). In this case, the court’s investigation revealed a deeply fractured and untraceable supply chain. The counterfeit peanuts were moved from the Appellant to Chai Hong Seng, to Hock Seng Malaysia, to Aik Lee Heng, and lastly to Hiap An Trading, which is a ghost firm. From a Halal Management point of view, the moment a retailer cannot trace an ingredient back to a legitimate manufacturer, then the Halal integrity of the entire premise is compromised.

The decision by the High Court that the Appellant did not exercise reasonable diligence matches perfectly well with the contemporary halal auditing practices. It is in the sense that a retailer or a businessman is not supposed to blindly trust middlemen. Administratively, they are obligated to ask for invoices, certificates from suppliers, and do regular audits to ensure that there are no cross-contamination or fraudulent activities. This is in line with the findings of Nugroho et al. (2024), consumers want to be assured that the food products are safe, healthy, sustainable and high quality due to the fact that they are unaware of the processes involved in food production.

Standard Act

The third pillar of the Halal Forensic model depends on the availability of the strong legislative structure. An absence of any legally binding Act of Parliament makes it impossible to translate laboratory findings and Shariah principles to judicial practice (Jaapar et al., 2022). In the struggle against food fraud, legislation is the main tool available for the government.

The issue in the Ang Seng Ho case involved a charge against the Appellant under Section 3(1)(b) of the Trade Description Act 1972 on the grounds of providing goods bearing a false trade description. The decision handed down by the High Court in this matter laid out the position that all offenses relating to consumer protection legislation fall within the purview of strict liability. This meant that it was not necessary for the prosecution to prove the mens rea but rather it was only necessary to prove the actus reus, which means proving the sale of the fake groundnuts in this instance. In order to prove innocence, the burden of proof lies solely on the defendant in Section 24 of proving that he had made “reasonable diligence”, which he has failed.

In terms of the current Halal Forensics framework, this ruling is very significant because Zakaria & Ismail (2014) reveal that, there are numerous issues of non-halal food production process, unclear content of food, as well as hygiene problems faced by Muslim populations. The TDA 1972 was an initiative taken by the Malaysian government in order to safeguard the consumers and this was later updated and replaced by the Trade Descriptions Act 2011. Now, the TDA 2011 is being used as the main statutory instrument for enforcing action against those abusing this act by the Department of Islamic Development Malaysia (JAKIM) and the Ministry of Domestic Trade and Cost of Living (KPDN) (Jaapar et al., 2022).

In particular, it is a serious criminal offense, under the Trade Descriptions (Certification and Marking of Halal) Order 2011, to use a false Halal symbol or misrepresent an item to be Halal. When the modern law enforcement officials raid a premise that sells uncertified or counterfeit Halal meat, the law enforcement officials use exactly the same strict liability principles that have been established in Ang Seng Ho. That is to say, it is the responsibility of the retailer to prepare all necessary documents according to the standard of Malaysia for halal food (Halim & Ahmad, 2014).

Halal Science

The fourth component of the Halal Forensic approach is the use of laboratory science. The legal authority to press charges is granted by the TDA, but it is Halal Science that provides the hard proof required for a conviction to be made in court (Mohamed et al., 2019). Without forensic profiling, the law enforcement officials will not be able to prove in court that the seized items are counterfeit. In the instance of Ang Seng Ho’s case, a food authentication test is necessary. According to Han Yang et al. (2025), food authentication methods consist of different approaches used to maintain food integrity, quality, and safety. Modern Halal Forensics would conduct analysis on the seized groundnuts through two different methods.

First, the forensics experts will employ Packaging Forensics which is the primary form of defense when investigating food authenticity (Kumar & Madhubati, 2022). As it pertains to this reported case, the forensic experts will carry out a thorough analysis on the counterfeit items. Through careful analysis of inks, printing techniques, fonts, holograms, batch numbers, and other security features, the investigators can match various seizures to the common printing press or machinery (Kumar & Madhubati, 2022). For example, since most counterfeiters operate in unscrupulous conditions, they use low resolution unauthorized printing plates or digital scanners. The findings from this particular test will help the investigator identify counterfeits.

Second, the forensic lab will conduct Chemical Profiling on the food matrix itself. Techniques like Gas Chromatography-Mass Spectrometry (GC-MS) or High-Performance Liquid Chromatography (HPLC) are used to investigate commodity adulteration in food product (Yang et al., 2025). The real ground products have their own chemical signature such as roasting residue profile, and controlled moisture levels. Since the adulteration likely involved the use of low-quality oils, and rushing the process of roasting the fake nuts, their chemical signature is expected to vary drastically from the actual composition (Yang et al., 2025). Therefore, the actus reus of the crime will be established through the objective proof of the chemical difference in court, leaving no defense for the Appellant in regard to the genuineness of his supplier’s products.

Health Implication

The final principle of Halal Forensic is the principle of Toyyiban, which states that the consumption must be safe, hygienic, and free from harmful pathogens (Halim & Ahmad, 2014). Although raw groundnut is

intrinsically halal, but the health consequences of fake agricultural products are dangerous since fake agricultural products evade all food safety guidelines and quality control set by nations (Ayza & Belete, 2015).

In regard to the case of Ang Seng Ho, the distribution of 230 packs of fake groundnuts posed several possible threats to the well-being of the people. These include legumes and nuts, which are extremely vulnerable to fungal infestation during processing and storage under improper conditions (Kluczkowski, 2019). *Aspergillus* is the major scientific risk associated with the production of peanuts as it is a toxicogenic fungus that produces aflatoxins. According to Gelderblom et al., (2014), aflatoxins are very dangerous substances and the ingestion of food contaminated with aflatoxin has been scientifically shown to cause liver cancer and liver failure due to its nature of targeting the liver.

The authentic producer company is strictly bound by strict procedures related to Quality Assurance (QA), Good Manufacturing Practices (GMP) as well as requirements by the Ministry of Health. Their laboratories regularly carried out tests to verify that the water content does not exceed the limits set and any batch containing aflatoxins is outright rejected (Jaapar et al., 2022). On the other hand, the peanuts used in the Appellant's case are counterfeit and came from unknown "ghost company". These syndicates work under no regulation and scientific quality checks. Consequently, the lack of these vital scientific controls makes the adulterated peanuts unsafe for human consumption (Sholahuddin et al., 2025).

Conclusion

In essence, the ruling of *Ang Seng Ho v Public Prosecutor* [1991] has been the cornerstone legal precedent in terms of consumer protection and business fraud cases in Malaysia. It has reinforced the principle that in terms of offenses involving false trade description, specifically under Section 3(1)(b) of the Trade Descriptions Act, the law operates under the principle of strict liability. In addition, through establishing that the burden of proof (*mens rea*) lies with the prosecutor and not the defendant, the judges conveyed clearly that ignorance can never be a valid defense in commercial trade. The narrow definition of "reasonable diligence" made it impossible for retailers to use the defense of ignorance of suppliers.

In this light, when viewed from the contemporary perspective of the Halal Forensic Pyramid, this case serve as a perfect example of Halal enforcement in the current age. The TDA 1972, which now has been repealed by the TDA 2011, is the legal ground to prosecute, while Halal Science provides concrete scientific evidence which ensures conviction. Moreover, the health hazards mentioned in the Health Implication section explain why the government must take such rigorous steps to protect its citizens. In the end, the application of all these components reflects the ultimate ethical principles of Shariah Law by maintaining Halalan Toyyiban and protecting the Maqasid Shariah. If the Appellant had implemented Halal Management and traceability effectively, this fraud would not have been committed.

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