

Plying for hire: When does a private hire car driver cross the line and break the law?

I. Introduction



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Singapore law maintains a keen distinction between taxis and private hire cars. To a layman, this distinction may turn on whether the driver in question can accept passengers off the street – a taxi driver is permitted to do so, but a private hire car driver is not.

At law, this distinction turns on the meaning of the phrase “ply for hire”.

The appellant in *Sulaiman bin Mohd Hassan v Public Prosecutor* [2021] SGHC 132, who will be referred to in this article as “the **Driver**”, was idling outside the Marina Bay Sands Hotel (“**MBS**”) when four female passengers approached him to ferry them to the Four Seasons Hotel Singapore (the “**Four Seasons**”) using his chauffeured private hire vehicle, a Toyota Alphard (the “**Vehicle**”). The circumstances under which he agreed to do so were disputed at trial, but what is undisputed is that he did indeed ferry them to the Four Seasons.

The Vehicle was licensed under Part V of the Road Traffic Act (Cap 276, 2004 Rev Ed) (the “**Road Traffic Act**”) to be used as a chauffeured private hire car, but not as a taxi.

The offence was discovered when one of the passengers left her designer jacket in the Vehicle and contacted Grab for advice. She then lodged a police report, whilst the Four Seasons also reported the matter to the Land Transport Authority (the “**LTA**”) on her behalf.

Accordingly, the Prosecution charged the Driver with one count of an offence under Section 101(1) read with Section 101(2) of the Road Traffic Act, and a further consequential charge of using the Vehicle as a taxi to carry passengers without a proper insurance policy in force, in contravention of Section 3 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) (the “**MVA**”).

The Driver claimed trial to both criminal charges, but failed to convince both the District Court as well as the High Court, on appeal, of his position.

II. The facts

The Driver's account was that:-

a. On the night in question, he had received a booking through the Uber app (this was early-2018 before Grab acquired Uber in Singapore) and therefore drove to MBS. After waiting at the pick-up area for ten to 15 minutes, the booking was cancelled. He decided to wait for a few minutes more to see if there might be another booking (at [77]).

b. This was when the four females approached the Vehicle. When they boarded, the Driver told them that he could not take them as he did not have their booking. He told them that they had to make a booking through Grab or Uber, but they persisted and asked that he send them as their destination was near (at [14]). So he did so (at [74]).

c. During the trip, the Driver did not talk to the four passengers as they were drunk and quarrelling (at [14]). He considered that he was merely providing them a helping hand by sending them to the Four Seasons Hotel nearby, and did not ask for any fare. However, they paid him a token sum of \$16 at the end of the trip (at [74]).

However, this was materially contradicted by the following:-

a. In his statement to the LTA, the Driver stated that he had dropped off a passenger at MBS, and that was how he came to be there. This contrasted with his testimony that he had driven to MBS for a pickup that was later cancelled (at [74]).

b. In this statement, he also claimed that he had to drive the Vehicle away from MBS once the four ladies had boarded, because there were many vehicles behind his sounding their horns. At trial, the Prosecution adduced CCTV footage that showed this to be false (at [76]).

c. Crucially, one of the passengers testified that they had agreed on a price of \$50 before the trip, and that she paid the Driver \$50 plus a \$10 at the destination (at [14]).

III. The meaning of the phrase “ply for hire”

The Honourable Justice of the Court of Appeal Tay Yong Kwang considered four English cases, namely *Cogley v Sherwood* [1959] 2 QB 311, *Rose v Welbeck Motors Ltd* [1962] 2 All ER 801, *Nottingham City Council v Woodings* [1994] RTR 72 and *Reading Borough Council v Ali* [2019] 1 WLR 2635 before laying down the following test for when a vehicle is plying for hire:-

65 Generally, when a vehicle on the road is on view to members of the public and there are indications that it is available for hire to anyone who is willing to pay a fare, then logically it can be said that the vehicle is plying for hire on the road. A vehicle moving along the roads looking for fares and stopping whenever it is hailed would clearly be plying for hire. However, the vehicle does not need to be on the move. It can be parked at the roadside or even in a carpark lot. The indications that it is available for hire may be express or implied. Express indications could be markings or notices on the vehicle or near it (where the vehicle is stationary) stating that the vehicle is for hire, for instance, by the display of “For Hire” signs. Implied indications could be the fact that the vehicle is waiting at a taxi stand or a drop-off and pick-up point for passengers.

66 There may also be situations where the vehicle is not within sight of members of the public (because it is parked at another location nearby) but the driver is away from the vehicle asking potential passengers whether they need transport and when they say they do, the driver then brings them to the vehicle or drives the vehicle to meet them. In all these situations, it would be fair and logical to say that the vehicle was in truth plying for hire.

67 On the facts of this case, another useful consideration is to enquire whether there was a booking made before the trip, whether through a ride hailing app or equivalent booking platform. If such a prior booking existed before the driver had any interaction with the prospective passenger, the vehicle would not be said to be plying for hire.

68 In the absence of a prior booking before the trip, the question that arises is how the driver came to offer his/her transport service to the prospective passenger. An agreement between the driver and the passenger:

(a) may be arrived at expressly through conversation or impliedly by conduct such as the passenger boarding the vehicle and the driver then driving the vehicle away. An express or implied agreement is envisaged in the definitions of "Private hire cars" and "Taxis" in the Second Schedule of the RTA; and

(b) must involve the expectation of or the giving of consideration by the passenger's payment of money or its equivalent in exchange for being ferried. This is implied by the words "for hire" in the Second Schedule of the RTA. Otherwise, the ride would be a gratuitous one and the driver would not have plied "for hire". The fact that a passenger fails or refuses to pay the fare at the end of the trip is immaterial if all the other factors point to the vehicle plying for hire.

IV. The result

Given the evidence that the Driver had agreed to ferry the four passengers to their chosen destination (1) in exchange for a fare; and (2) on the spot without a prior booking through Grab or Uber, he was held to have plied for hire within the meaning of the Second Schedule of the Road Traffic Act. The Vehicle was therefore operating as a taxi when it had no license to do so, and the Driver was convicted.

As a result, the Driver was also convicted on the charge under the MVA for using the Vehicle as a taxi to carry passengers without a proper insurance policy in force.

He was fined a total of \$1,700 and disqualified from driving for 12 months.

V. Postscript: Practical tips for private hire car drivers

If approached to take a passenger off the street, what should you do? Politely decline, and insist that the passenger make the necessary booking through the correct platform. If you hesitate to do so because of a concern that the algorithm may not automatically match you with the passenger, that is the natural consequence of you driving a private hire vehicle and not a taxi, which you must accept. As stated by

the Senior Minister for Transport in Parliament in 2016, the distinction is rooted primarily in the fact that taxis undergo more frequent inspections, clock much greater average mileage and taxi drivers undergo more rigorous training, thus warranting a strict delineation between the types of services that taxis and private hire cars may provide.

Of course, this statement, which was made in 2016, may no longer necessarily be true in 2021. Some private hire drivers do clock extensive mileage that can rival that of taxi drivers. However, the law has not yet changed to account for this.

Purely gratuitous trips are still allowed, though. This would take the trip outside the definition of “for hire”. Do note that there are no easy loopholes around this:-

- a. If a fare is agreed on but not paid, you would still be in breach of the law.
- b. If a fare is agreed on but you are paid less than what was agreed, you are still flouting the law.
- c. If a fare is agreed on but it is non-monetary, you are still committing an offence.

It is also not an excuse or a defence if a passenger boards and refuses to alight despite your protestations. Seek help to have the passenger removed from your vehicle; he or she would in any event be trespassing.

Otherwise, if you absolutely must accept that passenger and drive them to their requested destination, you can still perform a true act of kindness by not accepting payment in any form (monetary or otherwise) in exchange for the trip.

NB: The Road Traffic Act was substantially amended in 2019 to introduce harsher penalties for driving offences, including in relation to drink driving, careless or reckless driving especially where personal injury or damage to property is caused, and repeat offenders. These enhanced penalties can now involve higher fines, longer prison sentences and substantial disqualification periods. For legal advice on these issues, do consult a qualified lawyer.

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