

AN OVERVIEW OF SINGAPORE'S LEGAL SYSTEM

Text by Kuah Boon Theng and Jo-Ann Heng Hui Lyn

Sources of law

Under the Singapore legal system, there are two main sources of law – common law and statutory law. Common law, or judge-made law, can be discerned from judicial decisions or legal precedents, while our codified (statutory) laws are the product of the legislative process.

The Singapore Constitution gives Parliament the power to create legislation. Draft legislation, called a Bill, is first introduced in Parliament, after which it is debated. It may undergo revisions before it is passed into law and becomes an “Act of Parliament”.

The court system

The Singapore Courts comprise the Supreme Court, which includes the Court of Appeal and the High Court, and the State Courts, which include the District Court, Magistrate’s Court, Juvenile Court, Family Court, Coroner’s Court and other tribunals.

Each Court’s jurisdiction to hear cases is limited by statute. Civil cases involving claims of \$250,000 or more are heard in the High Court. While most criminal cases are tried in the State Courts, those involving capital offences are tried in the High Court.

The parties in an action may lodge an appeal if they are dissatisfied with

the Court’s decision. Appeals from the State Courts are heard in the High Court and appeals from the High Court are heard at the Court of Appeal. The Court of Appeal is Singapore’s apex court. Its decisions are final.

Alternate methods of dispute resolution

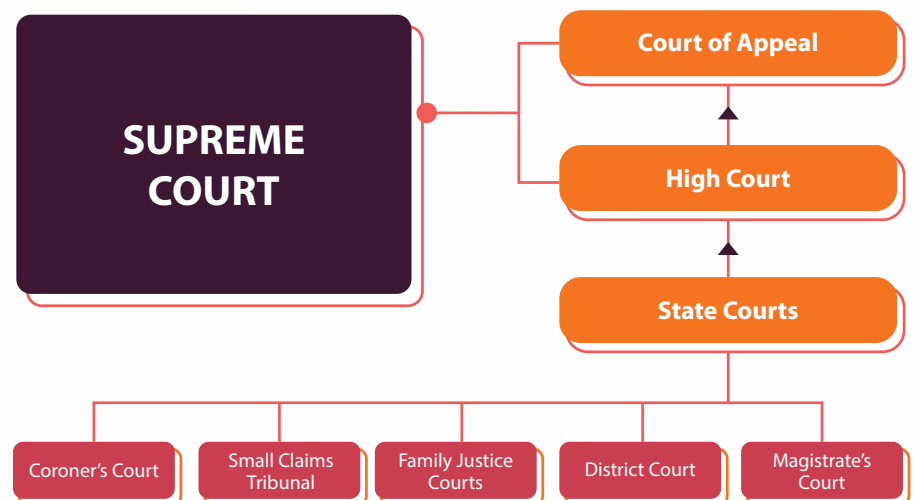
Arbitration

In recent years, an increasing number of disputes are being resolved out of court. Arbitration is a private closed-door process where the parties appoint arbitrators to adjudicate on the dispute and issue an arbitral award, which

is enforceable against the parties. Arbitration is often the chosen mode of dispute resolution stipulated in contracts but it is not typically used in medico-legal disputes.

Mediation

Unlike litigation and arbitration, both of which entail an adversarial process, mediation occurs when the parties voluntarily agree to try to resolve the dispute on mutually agreeable terms with the assistance of mediators. Mediation can lead to a faster resolution at a fraction of the cost of litigation. Under our current Court protocols, disputants in medico-legal cases are



encouraged to consider mediation and other forms of dispute resolution before bringing their cases to trial.

Liability of medical professionals

A claimant in a lawsuit (known as a plaintiff) can commence an action against healthcare providers such as doctors, clinics and hospitals, alleging medical negligence and seeking compensation. Under the common law, doctors have a duty to exercise reasonable care in the medical management of their patients. To prove that a doctor has been negligent, a plaintiff must establish that the doctor owed him a duty of care, that there was a breach of the standard of care, and that the plaintiff suffered loss and damages as a result of the breach. Lawsuits against hospitals and clinics are often based on assertions that the institutions are “vicariously liable” for the negligence of the healthcare professionals they had assigned to care for the patient.

Doctors can also incur criminal liability as a result of negligence. Section 304A of the Penal Code makes it a criminal offence to cause death by a rash or negligent act. If the medical negligence results in the death of a patient, this could result in criminal prosecution.

Prosecution is not limited to cases involving criminal negligence. Various statutes impose statutory obligations and duties on doctors. For example, Section 6(1) of the Infectious Diseases Act obligates a medical practitioner who has reason to believe that a patient is suffering from or is carrying an infectious disease to report this to the Director of Medical Services. If he/she fails to do so, the medical practitioner is at risk of being charged for breaching our statutory laws and could be found guilty of an offence punishable by a fine or imprisonment.

Another form of prosecution that doctors may face is that of a formal inquiry conducted by a Disciplinary Tribunal of the Singapore Medical

Council (SMC). This is a quasi-criminal proceeding, where charges are brought against a doctor and the doctor is required to plead guilty or not guilty. A doctor who is found guilty of professional misconduct may be censured, fined or suspended from practice. In egregious cases, the doctor could even be struck off and lose his/her right to practise. Appeals against the decisions of the SMC Disciplinary Tribunal are heard by the Court of Three Judges (often mistakenly referred to as the Court of Appeal, when in fact the Court of Three Judges exercises High Court jurisdiction in the hearing of such appeals).

Doctors' involvement in legal proceedings

Doctors may find themselves in Court or attending other proceedings in a myriad of situations. They might be asked to testify as witnesses in criminal cases or in civil litigation where a claim for damages arising from personal injury is made. A witness can be compelled to testify in Court if they are served with a “subpoena”. Doctors may also be called to give evidence in a Coroner’s Inquiry, a fact-finding process where the State Coroner’s objective is to determine the deceased’s cause of death. Doctors may also agree to be engaged as expert witnesses to provide an opinion on matters within their expertise and knowledge.

Depending on the type of legal proceedings, doctors may be required to submit reports, conditioned statements or affidavits setting out their evidence. An affidavit is a sworn statement of evidence made in writing and confirmed under affirmation or oath. In civil lawsuits, evidence typically needs to be submitted in the form of affidavits if they are to be admissible in Court.

Doctors are advised to familiarise themselves with the forum and nature of the legal process should they be called to participate in legal proceedings, and to seek advice wherever necessary. ♦

Boon Theng is the managing director of Legal Clinic LLC. Appointed Senior Counsel in January 2018, she has more than 25 years’ experience in litigation and is a domain specialist in medical and healthcare law. She is an adjunct lecturer in medical law and ethics with various tertiary institutions in Singapore and also an Honorary Legal Advisor to the SMA.



Jo-Ann is a third year student in the double degree programme with NUS Law and Yale-NUS.