

Introduction to Singapore Law & Legal System

This paper is intended purely as an overview of Singapore law and the legal system. By virtue of the scope of the topic, this paper can do little more than give a very general introduction.

1. History of Singapore Law & Legal System

1819 - 1866: British Occupation

Prior to 6 February 1819 jurisdiction over the handful of Malay fishermen on the island of Singapore was exercised by the Dato Temenggong, who was a subject of the Sultan of Johore. Following the treaty of friendship and alliance entered into between Sir Stamford Raffles and the Dato Temenggong, the city of Singapore was placed under the jurisdiction of Bencoolen (Sumatra) as Raffles was the Governor of Bencoolen. In 1823, Raffles issued a Regulation that removed the control of Bencoolen over Singapore and made the city a dependency of the Indian Government in Bengal under the jurisdiction of the Supreme Court of Calcutta.

In 1826, the British Crown issued the Second Charter of Justice that created the Court of Judicature of Prince Wales Island, Singapore and Malacca and formally introduced English law to the island. There was only 1 professional judge (Recorder) who was assisted by lay judges. The Recorder, whose headquarters was in Penang, visited Singapore only twice a year. In 1855, a Third Charter of Justice was granted which moved the Court to Singapore and appointed an additional Recorder.

1867 - 1946: Straits Settlements

During this period, Singapore was part of the Colony of the Straits Settlements (together with Malacca and Penang) and was administered by the Colonial Office in London. On 4 February 1867, the 1st Legislative Council of the Straits Settlements was set up, replacing the Legislative Council of India. Thereafter, Straits Settlements Acts and Ordinances were enacted to govern Singapore as well as Malacca and Penang.

In 1868, the Supreme Court of the Straits Settlements was set up. Under this new system the Recorder of Singapore became the first Chief Justice of the Straits Settlements. In 1873, the Court of Appeal was established. In 1907, the Supreme Court (comprising the Court of Appeal and the High Court)

was reorganised and the District Courts set up. In 1934, the Court of Criminal Appeal was set up as an extension of the Supreme Court. It was only towards the 1930's that a separation of powers was introduced between the Executive, the Legislature and the Judiciary in Singapore.

1946 - 1963: A Separate Colony

After World War II and the re-occupation by the British, the Straits Settlements was eventually disbanded in 1946. The Malayan Union was then formed. Singapore became a separate colony with its own Legislative Council which enacted the series of Singapore Acts and Ordinances and its own system of Courts. In 1949, the first Juvenile Court was set up under the auspices of the Children and Young Persons Ordinance. In 1958, the British government agreed that Singapore would have self-government and in 1959, the People's Action Party was voted into power.

1963 - 1965: Merger with Malaysia

In 1963, Singapore became a member of the Federation of Malaysia and all sovereignty and jurisdiction exercised over Singapore by the United Kingdom was relinquished. During the brief period of merger, the Supreme Court of Singapore became the High Court and the Singapore Court of Appeal & Court of Criminal Appeal were merged into the Malaysian Federal Court.

1965 onwards: An Independent State

Singapore separated from Malaysia in 1965, becoming a sovereign and independent state. A new Supreme Court of Judicature Act was enacted in 1969 thus creating Singapore's own Supreme Court, comprising the Court of Appeal, Court of Criminal Appeal and the High Court. The Subordinate Courts Act was also enacted at this time, putting in place the District, Magistrates, Coroners, Juvenile Courts. In 1969, the jury system was abolished in Singapore, leaving all matters both civil and criminal in the hands of the judges. In 1968, the Syariah Court was established by virtue of the Administration of Muslim Law Act to deal with the application of Muslim law in Singapore.

2. Role of Common Law & Statutory Enactment

The **Common Law** refers to the unwritten law (i.e. law not embodied in a code or statute) and legal customs of England which have been recognised and given the force of law. The common law is found in the judgments of Judges in deciding cases. A significant portion of the common law is also based on custom. This body of law is continuously growing and remains applicable in Singapore owing to the continuous reception of English law in Singapore.

Equity was developed to ensure that there was some form of “natural justice” or remedy for grievances which the common law supplied no or insufficient remedy, eg. the remedies of specific performance and the injunction. Whilst the administration of the common law and the principles of equity are now fused (i.e. separate courts are no longer necessary), the substantive rules of each realm are distinct.

Case law or the previous decisions of the courts are important sources of law. The courts apply the doctrine of binding precedents or *stare decisis* in order to regulate which decisions may be departed from and which decisions must be followed. As a general rule, decisions of higher courts bind the lower courts in the same jurisdiction, while decisions of foreign courts are persuasive where the foreign law is in *pari materia* with that of Singapore with the laws of Singapore.

Statute Law or Legislation represents the laws enacted by Parliament which are embodied in a code or statute. To become law, a Bill must pass 3 readings in Parliament, followed by the President's assent and publication in the Government Gazette. The rules, regulations, notifications and other instruments issued under an Act, subordinate to the statutes themselves are referred to collectively as **Subsidiary Legislation**. All subsidiary legislation must be consistent with the statute under which it is issued.

3. Reception of English Law

Reception of English law in Singapore took place on 27 November 1826 pursuant to the Second Charter of Justice. All English law (common law, equity and statute law) prior to 27 November 1826 was thus received in Singapore. However, all English law would be applied in Singapore subject to the local circumstances and local conditions.

On 12 November 1993, the Application of English Law Act (Cap. 7A) was enacted to declare the extent to which English law is applicable in Singapore. Section 3 of the Act provides that the common law of England already a part

of Singapore law shall continue to be part of Singapore law, so long as it is applicable to local circumstances and its inhabitants, subject to such modifications as may be required. Section 4 of the Act provides that English enactments are generally not part of Singapore law, except those specifically set out in the First Schedule (e.g. Partnership Act, Misrepresentation Act, Sale of Goods Act and the Unfair Contract Terms Act) and any other English enactments which apply or are in force in Singapore by virtue of any written law.

4. **The Courts and their Structure**

In 1993, a single **Court of Appeal** (to replace the separate Court of Appeal and Court of Criminal Appeal) was created to hear both civil and criminal appeals. On 8 April 1994, with the coming into operation of the Judicial Committee (Repeal) Act 1994, Singapore's link to the Privy Council was severed as the avenue of appeal to the Privy Council was abolished. The Court of Appeal thus became the final appellate court in the Singapore legal system. The **High Court** exercises both appellate and original civil and criminal jurisdiction. Together, the Court of Appeal and the High Court constitute the **Supreme Court** (www.supcourt.gov.sg) which is regulated by the Supreme Court of Judicature Act (Cap. 322).

The **Subordinate Courts** of Singapore (www.subcourts.gov.sg), which exercise both civil and criminal jurisdiction are regulated by the Subordinate Courts Act (Cap. 321). The Subordinate Courts consist of the **District Court** (with civil jurisdictional limit of S\$250,000.00) and the **Magistrate's Court** (with a civil jurisdictional limit of S\$60,000.00). The **Coroners Court** [regulated by the Criminal Procedure Code (Cap. 68)], the **Juvenile Court** [(regulated by the Children and Young Persons Act (Cap. 38)] and the **Small Claims Tribunal** [regulated by the Small Claims Tribunals Act (Cap. 308)] are also tribunals which come under the umbrella of the Subordinate Courts. In addition, a **Family Court** has also been set up. Although the Family Court is officially part of the High Court, the functions are carried out by the Subordinate Court judges.

In Singapore, the **Syariah Court** was set up by virtue of the Administration of Muslim Law Act (Cap. 3) to make provision for the regulation of Muslim religious affairs and to constitute a council (the Majlis) to advise on matters relating to the Muslim religion in Singapore.

Other forms of dispute resolution (apart from the litigation process) are also practised in Singapore. The **Singapore International Arbitration Centre**

(www.siac.org.sg) and the **Singapore Mediation Centre** (www.mediation.com.sg) have been hearing and resolving matters between parties on a more informal basis as compared to the litigation process.

5. **Nuts & Bolts of Civil Procedure and the Rules of Evidence**

The organisation, jurisdiction and powers of the civil courts are set out in the Supreme Court of Judicature Act (Cap. 322) and the Subordinate Courts Act (Cap. 321). In 1996, the rules of civil procedure for both the Supreme and Subordinate Courts were merged and embodied in the Rules of Court 1997. These rules are based on the rules of civil practice in England. Several types of proceedings, however, are regulated by their own procedural rules and regulations. These include bankruptcy, winding-up and matrimonial proceedings.

Prior to commencing a civil claim in Singapore, several fundamental issues must first be considered. Apart from the existence of a valid cause of action recognised in law, procedural matters must also be addressed. For example, the potential plaintiff must ensure that he has the *locus standi* to commence proceedings against the proper defendant.

The **limitation period** of the claim must not have expired. Under the Limitation Act (Cap. 163), the limitation period for actions based on contract or tort is 6 years from the date on which the cause of action accrues. For actions for damages for negligence or nuisance, the limitation period is generally 6 years, unless the action involves a claim for personal injury in which case, the limitation period is shortened to 3 years.

The Singapore Courts must also have **jurisdiction** to hear the action and further, should be the appropriate forum. Where there are other competing jurisdictions or *fori*, a defendant may apply to the Singapore court for the Singapore proceedings to be stayed on the basis that the matter would be better heard in another jurisdiction.

The most common form of originating process is the **Writ of Summons**. (The others are the Originating Petition, Motion and Summons). A Writ of Summons must be served *personally* on the defendant within 6 months from the date the Writ is issued by the Court. In the event, that personal service cannot be effected, an application may be made to Court for leave to serve the Writ by *substituted* service, either by way of posting at the last known address of the defendant or by advertisement in the newspapers.

The Writ either includes a general endorsement (being a brief statement of the Plaintiff's claim against the defendant) or more commonly, is endorsed

with a Statement of Claim. The **Statement of Claim** is a very important document as it sets out the plaintiff's case. The Statement of Claim must state specifically the remedy or relief which the plaintiff claims. The plaintiff is limited to his pleaded case and may not indiscriminately amend or vary his claim. The rules provide opportunities for the plaintiff to apply for leave to amend the Statement of Claim (which apply to the other pleadings that follow). However, such orders are usually accompanied by orders of costs to be paid by the plaintiff to the defendant to compensate for any prejudice suffered by the defendant occasioned by the amendment.

Within 8 days of service of the Writ, the defendant must file a **Memorandum of Appearance** (either on his own behalf or through his solicitors) if he intends to defend the plaintiff's claim. In the event that he fails to do so, the plaintiff may apply for judgment in default to be entered against him on the basis of the Statement of Claim.

Within 22 days of service of Statement of Claim, a defendant who has entered a Memorandum of Appearance, must file a **Defence (and Counterclaim**, if any) against the plaintiff's claim. In the event that he fails to do so, the plaintiff may apply for judgment in default to be entered against him on the basis of the Statement of Claim. It is the practice in Singapore, however, to give the defendant a 48-hour notice of the plaintiff's intention to enter judgment in default against him at the expiry of the said 22-day time period.

The Plaintiff may then file a **Reply (and Defence to Counterclaim**, if any) within 14 days of being served with the Defence. At the expiration of 14 days from the date on which the Reply is filed, pleadings are deemed closed.

The pleadings are very important as they serve to crystallise the matters in issue in the action. In addition, the pleadings also gives the parties notice of each other's allegations and arguments prior to the trial such that parties may prepare their cases for trial and so the element of surprise is reduced.

Judgment Without Trial

In addition to the option of entering **default judgment** in the appropriate circumstances, **summary judgment** may be entered where the defendant has no defence to the plaintiff's claim. An application for summary judgment must be made together with an affidavit that sets out all the material facts of the plaintiff's case and all relevant documents in support. The defendant is given the opportunity to show cause against the plaintiff's application by filing an affidavit in reply within 21 days of being served with the plaintiff's

application. The plaintiff may then respond to the defendant's allegation by way of a further affidavit within 14 days thereafter. The application for summary judgment will then be heard before a Registrar.

The threshold for defeating an application is relatively low. The defendant need only show that there are "triable issues" i.e some issue which requires the matter to be tried in the interest of justice. Accordingly, the Registrar will only grant summary judgment in very clear cases. Alternatively, if the Court is of the view that the issues raised by the defendant are mere attempts to delay matters, the Registrar may grant the defendant leave to defend the action at trial upon fulfilling certain conditions. The usual condition being payment into court of a specified sum within a specified time, failing which the plaintiff may enter final judgment. The Registrar may also grant unconditional leave to defend where he believes that the defendant has an arguable defence and where disputes of fact need to be resolved at trial.

Discovery

In the event that default or summary judgment is not entered against the defendant or all pleadings have been filed and served and are therefore deemed closed, parties are required to make discovery to the other party of all relevant documents. This is done by way of filing a **List of Documents** and an affidavit verifying the said List.

Discovery is an important process that must be complied with fully, as the courts in Singapore do not generally allow documents to be tendered or produced close to or during the trial of the matter. Adequate notice of all documents (including photographs, e-mails and computer records) relating to the issues in dispute must be given to the other party. Discovery must be made of all these documents whether such documents are in favour or prejudicial to the party. As such, it is imperative that all documents are stored safely and are not damaged or destroyed or altered in any way. Failure to give discovery could not only preclude a party from adducing such documents in evidence but could also result in the Court drawing an adverse inference from the failure to comply with the obligation to give discovery.

Within 14 days after pleadings are deemed closed, parties must exchange their Lists of Documents and affidavits verifying the same. Inspection of the documents disclosed in the List will follow thereafter. There are some categories of documents which are privileged from disclosure. This is dealt with below.

The Trial

As the plaintiff commences proceedings it is only logical that the burden of proof rests with the plaintiff to prove his case. The plaintiff's witnesses, therefore, will be required to give their evidence first. Generally, witnesses give their evidence in chief in the form of affidavits, which are filed and exchanged by the parties prior to the trial. These witnesses may be required to give additional evidence orally at the trial in respect of matters that have arisen after the affidavits were filed and exchanged.

The witness will be orally cross-examined on his evidence by the defendant's counsel. Cross-examination is not limited to the matters raised in the affidavit evidence or oral evidence given by the witness. Counsel can cross-examine a witness even on matters not raised provided these are relevant to the issues before the Court. The plaintiff's counsel will then have the opportunity to re-examine the plaintiff's witnesses. Re-examination is limited to matters which were raised in cross-examination. Once the plaintiff's witnesses have given their evidence, the defendant's witnesses give evidence, are cross-examined and then re-examined on this evidence in the same manner.

Evidence

The rules of evidence must be adhered to when drafting affidavits of evidence-in-chief and when adducing oral evidence during trial. All evidence to be introduced during a trial must be admissible and relevant. The rules of evidence are found in the Evidence Act (Cap. 97) and at common law.

Exclusionary rules evolved at common law as a result of the recognition that certain types of evidence were not the best available or were unreliable or that the prejudicial effect of the evidence outweighed its probative value. As such, evidence showing that a defendant had committed that same or similar acts in the past (similar fact evidence), hearsay evidence, prior judgments in certain circumstances, opinion evidence and evidence of character are generally excluded.

The Evidence Act, on the other hand, is inclusive by nature and sets out all provable facts in terms of their relevancy. The sections, therefore, provide exceptions to the various exclusionary rules when evidence may be properly admitted.

Accordingly, upon receipt of the affidavits of evidence-in-chief, a solicitor is required to file a Notice of Objections to the Contents of the Affidavits of Evidence-in-Chief of all the witnesses. During the trial, these objections will be adjudicated upon by the judge.

Privilege

Generally, all communication made between a solicitor, in the course of his employment by his client, and his client is privileged and may not be disclosed unless with the client's express consent (section 128 of the Evidence Act). However, this section does not protect communication made in furtherance of an illegal purpose or those facts observed by the solicitor showing that a crime or fraud has been committed.

Privilege also attaches to "without prejudice" communications. These are admissions made during the course of settlement negotiations in respect of an existing dispute. Section 23 of the Evidence Act provides that such admissions (which are made on the express or implied condition that they shall not be referred to at the trial) shall not be admissible.

Enforcement of Judgments

Judgments must be enforced within 12 years from the date on which the judgment is given. In the event that a judgment debtor fails to satisfy the judgment obtained against him, the judgment creditor may commence execution proceedings against him. The most common manner of execution is probably the **writ of seizure and sale**. The movable or immovable assets of the judgment debtor may be seized and subsequently sold. The net proceeds of sale may then be applied to satisfy the judgment debt. Alternatively, the judgment creditor may take out **garnishee proceedings** against the judgment debtor. This method of execution is useful in the event that the judgment creditor is in possession of information relating to bank accounts of the judgment debtor, such that these may be garnished in order to satisfy a judgment debt.

A judgment creditor may take out an application to examine the judgment debtor. This is done in order that a judgment creditor may be in a better position to make an informed decision as to whether it would be feasible to proceed with execution proceedings and in such event, which method would be most effective. If such an application is given, the judgment debtor will be summoned to Court and questioned on all his or her assets.

Whilst not strictly a method of enforcement, **bankruptcy proceedings** (in the case of individuals) or **winding-up proceedings** (in the case of companies) may be used to encourage a judgment debtor to make payment of his judgment debt. When faced with the possibility of being made a bankrupt or being wound-up, a judgment debtor may choose to make payment. In the event that the judgment debtor is made bankrupt or is wound-up, all proceedings against the entity are stayed and any debts due must be submitted to the Official Receiver or Assignee or private liquidator to be adjudicated upon. In the event such a **proof of debt** is admitted, satisfaction of the debt will be dependent upon the available assets of the debtor.

6. Elements of Criminal Law and Procedure

Criminal Law

Criminal law is defined as a body of rules prohibiting certain conduct on pain of punishment. In Singapore, the Penal Code (Cap. 224) was modelled on the Indian Penal Code (1863) and was intended to consolidate the law relating to criminal offences. However, many other statutes in Singapore set out the law relating to certain types of offences, eg. Bankruptcy Act (Cap. 20), Companies Act (Cap. 50), Computer Misuse Act (Cap. 50A), Securities Industry Act (Cap. 289) and the Women's Charter (Cap. 353).

Most legal systems subscribe to the view that generally criminal liability will only be imposed where there is a coincidence of 2 ingredients, being *actus reus* (the conduct or action of the accused which produces or constitutes the forbidden harm) and *mens rea* (a blameworthy state of mind). There are, however, a limited number of offences of strict liability, i.e. where the element of *mens rea* is dispensed with. Examples of offences of **strict liability** include statutory offences under the Road Traffic Act (Cap. 276) or Companies Act (Cap. 50) and statutory rape (section 375 of the Penal Code).

The Penal Code provides for various circumstances which act as defences to criminal offences. The first of these is that of **private defence**. The right of private defence (or self-defence) extends both to the protection of one's own body, the body of another or property. The right commences as soon as there is a reasonable apprehension of danger to the body or property. In general terms, therefore, a criminal act committed in exercise of this right of private defence is not a criminal offence if committed under prescribed circumstances.

Under certain circumstances, various actions or conduct may be taken to have been consented to and therefore, these actions will not constitute a criminal offence as the defence of **consent** may be pleaded. Examples of such circumstances include hurt caused during sports or surgery.

Necessity is a defence to any crime where the accused is faced by an extreme and immediate harm and commits harm in good faith, without criminal intention, for the purpose of preventing other harm. It should be noted, however, that the parameters of this defence are exceedingly ambiguous and as a result, is rarely relied upon.

The defence of **superior orders** is available to an accused where the orders themselves are not manifestly illegal and where he believes in good faith that he bound by those orders.

Nothing is an offence which is done in good faith, where the accused believes by reason of a **mistake** of fact that he is bound to do it or justified in so doing. Good faith has been defined in the section 52 of the Penal Code to refer to that which is done with due care and attention. It should be noted that the mistake must be a mistake of fact and not law. Mistake as to law is not a defence.

Nothing is an offence which is done by **accident** or misfortune, and without criminal intention, and with proper care and caution.

The defence of **duress** may be resorted to in the event that an act is done as a result of a threat of instant death and where it would be objectively reasonable for the accused to apprehend death. This defence may not be extended to situations where the threat is directed to someone other than the accused himself.

Nothing is an offence which is done by reason of **unsoundness of mind** operating at the time of the act, and as a result the accused is incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law.

Intoxication shall not constitute a defence unless the accused was in a state of intoxication without his consent by the malicious or negligent act of another or if the intoxication caused the accused to become insane, and as a result of the intoxication, the accused did not know that his actions were wrong or contrary to law.

Criminal Procedure

In Singapore, the bulk of criminal procedure is set out in the Criminal Procedure Code (Cap.68). Whilst the Penal Code (which deals with substantive criminal law) is based on the Indian law, the Criminal Procedure Code is based on the law relating to criminal procedure in England. Where the Criminal Procedure Code or any other law in Singapore does not prescribe the mode of carrying out a specific transaction, regard is given to the English law relating to criminal procedure.

The Criminal Procedure Code grants the police powers of arrest, search and investigation. The Criminal Procedure Code sets out in its Schedule A all the offences under the Penal Code and indicates, *inter alia*, which offences are seizable or non-seizable and which offences are bailable or non-bailable. A police officer may, *without* a warrant, **arrest** any person whom he has reasonable grounds to believe has committed a seizable offence. A private person's power of arrest is limited to offences which are non-bailable and seizable. An example of such an offence is housebreaking by day or night.

The police have automatic powers of **search** if investigating a seizable offence. They may enter the house or place of abode of the person who is under a arrest and search those premises for evidence of the offence, without a warrant. However, if a high-ranking police officer has reasonable cause for suspecting that stolen property has been concealed in any place, that officer may search for that stolen property without a warrant.

Any person arrested without a warrant shall be brought before a magistrate "without unreasonable delay", subject to being released on bail. Such a person cannot be detained by the police for more than 48 hours. These rights are also enshrined in the Constitution of the Republic of Singapore in Article 9(4). Article 9(3) of the Constitution provides that an arrested person must be granted access to counsel within a reasonable time from the time of his arrest. In Singapore, 2 weeks has been held to be reasonable.

Siva Murugaiyan/Parveen Kaur Nagpal
Azman Soh & Murugaiyan
Singapore