

LEGAL SYSTEMS IN ASEAN – SINGAPORE

CHAPTER 1 – HISTORICAL OVERVIEW

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A. INTRODUCTION

The foundation of the Singapore legal system is English in origin. This chapter outlines the legal history of Singapore from its founding to the present time and briefly discusses the reception of English law in Singapore.

B. SINGAPORE LEGAL HISTORY

1819 – 1866

Singapore was founded by Sir Thomas Stamford Raffles of the British East India Company¹ in 1819. This is recognised as the starting point of Singapore's modern legal system.² That year, Raffles established Singapore as a trading post. Singapore then was largely uninhabited. There were about 150 Malay fishermen under the authority of the Temenggong who was an official of the Johore Sultanate. There were also some Chinese inhabitants.³

In 1824, the Sultan of Johore and Temenggong ceded Singapore to the British.⁴ The British East India Company thereby acquired full sovereignty in perpetuity over Singapore. Apart from Singapore, Penang and Malacca were also in the possession of the British East India Company. Malacca and Singapore were placed under the Bengal Presidency, while Penang was a separate Presidency⁵.

In 1826, an English Act of Parliament⁶ was passed to enable the Crown to make provision for the administration of justice in Singapore and Malacca. It also empowered the Directors of the British East India Company to declare Singapore and Malacca to be

* The views expressed in this article are that of the author alone. They do not necessarily reflect the views or opinions of the ASEAN Law Association or the organisation which the author is currently associated with.

¹ The British East India Company was established on 31 December 1600 with the primary interest of 'developing English commerce over as wide an area of Asia as possible'. In the 16th century, Europe was bustling with trading activities. European traders and merchants sought to establish and protect trade routes to China and the East Indies. This led to the establishment of huge trading companies under royal charter such as the British East India Company and the Dutch East Indies Company which emerged as 'the multinationals of their age'. See Kevin YL Tan, *A Short Legal and Constitutional History of Singapore*, Essays in Singapore Legal History, 2005, at 27.

² Kevin YL Tan, *A Short Legal and Constitutional History of Singapore*, Essays in Singapore Legal History, 2005, at 29.

³ Helena HM Chan, *The Legal System of Singapore*, 1995, at 2.

⁴ By the treaty of 19 November 1824, the Sultan of Johore and Temenggong agreed to 'cede in full sovereignty and property to the Honourable the English East India Company, their heirs and successors forever, the Island of Singapore ...'.

⁵ Penang had been a separate Presidency since 1805.

⁶ 6 Geo. IV, c. 85.

annexed to Penang and to be part of that settlement. Singapore and Malacca were thereby united with Penang to form the separate Presidency of the Straits Settlements.⁷

In 1829, the Directors decided to abolish the Straits Settlements Presidency and bring the three territories under the control of the Bengal Presidency. In 1830, the Straits Settlements became subject to the Bengal Presidency. In 1858, the British East India Company was abolished and the Straits Settlements came under the new Indian Government.⁸ Singapore was made the administrative centre. The Straits Settlements remained largely under the India Office until 1867.

1867 – 1945

In 1867, by an Order in Council made under the Government of the Straits Settlements Act,⁹ the Straits Settlements were separated from the Government of India. The Straits Settlements were transferred to the Colonial Office in London and became a Crown Colony.

From 1942 to 1945, Singapore was occupied by the Japanese. The Japanese occupation meant that Singapore would be administered, and justice dispensed, according to the rules and regulations of the Japanese.¹⁰ After the Japanese surrendered in 1945, the British resumed control of Singapore.

1946 – 1963

By the Straits Settlements Repeal Act 1946, the Straits Settlements were disbanded in 1946. Singapore was established as a separate Crown Colony vested with a constitution of her own. Penang and Malacca were united with the Federated Malay States and the unfederated Malay states to form the Malayan Union. In 1948, the Malayan Union was replaced by the Federation of Malaya.¹¹

In 1959, Singapore achieved internal self-government and the colony became the State of Singapore. In 1963, Singapore merged with Sarawak, North Borneo and the existing states of the Federation of Malaya to form the Federation of Malaysia. Singapore's membership in the Federation of Malaysia was, however, a short one.

In 1965, political differences led to Singapore's expulsion from the Federation and on 9 August 1965, Singapore became an independent republic.

C. THE RECEPTION OF ENGLISH LAW

The English origin of the Singapore legal system is due to the reception of English law during and even after the colonial era.¹²

⁷ Helena HM Chan, *The Legal System of Singapore*, 1995, at 2.

⁸ Kevin YL Tan, *A Short Legal and Constitutional History of Singapore*, Essays in Singapore Legal History, 2005, at 36.

⁹ Government of the Straits Settlements Act 1866, 29 & 30 Vic c. 115.

¹⁰ Kevin YL Tan, *A Short Legal and Constitutional History of Singapore*, Essays in Singapore Legal History, 2005, at 42.

¹¹ Helena HM Chan, *The Legal System of Singapore*, 1995, at 3. See also Kevin YL Tan, *A Short Legal and Constitutional History of Singapore*, Essays in Singapore Legal History, 2005, at 43.

¹² Helena HM Chan, *The Legal System of Singapore*, 1995, at 4.

General Reception of English law (Before enactment of Application of English Law Act in 1993)

In the early years after the British East India Company acquired Singapore, there was much confusion on the legal front. It was only in 1826 when the Second Charter of Justice was granted by the Crown to the British East India Company that a court system was established in Singapore. The Second Charter of Justice abolished the old court which had served only Penang and created a new court to serve Penang, Singapore and Malacca.¹³

After the court system was established, an issue arose as to what law the new court was to apply. The Second Charter of Justice contained no clear direction on this question notwithstanding that it conferred on the new court the jurisdiction and powers of English courts. It also did not declare that the law of England was to be the territorial law of Singapore.

However, a series of decisions from 1835 to 1890 held that English law as it existed on 27 November 1826 was introduced into the Straits Settlements by the Second Charter of Justice. In the well-known case of *R v Willans*, Sir Benson Maxwell R held that “a direction in an English Charter to decide according to justice and right, without expressly stating by what known body of law they shall be dispensed and so to decide in a country which has not already an established body of law, is plainly a direction to decide according to the law of England”.¹⁴

Therefore, as a result of the Second Charter of Justice, Singapore received a court system on the prevailing English model. Further, as a result of judicial interpretation of the language of the Second Charter of Justice, it was accepted that the law of England as it stood on 27 November 1826 was received into Singapore. This phenomenon is commonly known as “the general reception of English law”.¹⁵

However, not all English laws were suitable for application in Singapore. The colonial judges were confronted with the problem of determining what qualifications should be made to the general reception of English law. The Second Charter of Justice, common law and imperial practice had provided no guidance. The task fell on the colonial courts in the first instance, and ultimately the Privy Council, which was the court of last resort for Britain’s overseas empire.¹⁶

Over a period of time, judicial decisions established that the general reception of English law in the Straits Settlements under the Second Charter of Justice was subject to three qualifications:

- (a) Only English law of general policy and application was to be received¹⁷;

¹³ Helena HM Chan, *The Legal System of Singapore*, 1995, at 4. It is interesting to note that by 1855, Singapore had developed so rapidly that it was felt necessary to reorganise the existing court structure to provide for a separate division with its own recorder, serving only Singapore and Malacca. This was effected by the Third Charter of Justice.

¹⁴ (1858) 3 Ky 16 at 37.

¹⁵ Helena HM Chan, *The Legal System of Singapore*, 1995, at 6.

¹⁶ Helena HM Chan, *The Legal System of Singapore*, 1995, at 6.

¹⁷ *Choa Choon Neo v Spottiswoode* (1869) 12 Ky 216 at 221.

(b) English law that was received was to be applied subject to local religions, manners and customs¹⁸;

(c) English law that was received was to be applied subject to local legislation.

Each of these qualifications to the general reception of English law is discussed briefly below.

(a) *Only English Law of General Policy and Application was to be received*

In 1875, the Privy Council on an appeal from the Straits Settlement of Penang in *Yeap Cheah Neo v Ong Cheng Neo*¹⁹ decided that “statutes relating to matters and exigencies peculiar to the local condition of England, and which are not adapted to the circumstances of a particular Colony, do not become a part of its law, although the general law of England may be introduced into it”. Applying this test, the Privy Council held that English statutes relating to superstitious uses and mortmain were excluded, but upheld the introduction of the rule against perpetuities in Penang because the policy of ensuring free alienability of land in England would be equally relevant for Penang.²⁰

Hence, for pre-1826 English law to be applicable in Singapore, it had to be of general policy and application.

(b) *English Law that was received was to be Applied subject to Local Religions, Manners and Customs*

English law that was generally applicable might have to be modified so as to avoid injustice and oppression to the local population. This was an issue that was considered by the local courts and Privy Council in a number of decisions.

In *R v Willans*, Sir Benson Maxwell R was of the view that the Charter had not authorised the modification of English law to accommodate local custom and usage.²¹ This view was, however, not endorsed in subsequent cases. It was evident from the subsequent decisions of the local courts and the Privy Council that the courts were willing to modify the application of English law to prevent injustice or oppression that would otherwise result.²²

Such modifications were primarily in family law and related subject matters such as marriage, divorce, adoption and succession. These were areas which least conflicted with British commercial interests.²³ For example, Chinese polygamous marriages were recognised so as to allow secondary wives and their children to be provided for under the Statutes of Distributions.²⁴

However, modification was not allowed where it impinged on British commercial interests. In areas of law such as contract, commercial law, procedure, evidence and other

¹⁸ *Choa Choon Neo v Spottiswoode* (1869) 12 Ky 216 at 221.

¹⁹ (1875) LR 6 PC 381.

²⁰ Helena HM Chan, *The Legal System of Singapore*, 1995, at 7.

²¹ (1858) 3 Ky 16 at 31-33.

²² See *Cheang Thye Phin v Tan Ah Loy* [1920] AC 369, *Khoo Hooi Leong v Khoo Hean Kwee* [1926] AC 529, *Khoo Hooi Leong v Khoo Chong Yeok* [1930] AC 346.

²³ Helena HM Chan, *The Legal System of Singapore*, 1995, at 9.

²⁴ See *Cheang Thye Phin v Tan Ah Loy* [1920] AC 369, *Khoo Hooi Leong v Khoo Hean Kwee* [1926] AC 529, *Khoo Hooi Leong v Khoo Chong Yeok* [1930] AC 346.

general areas, English law of general application applied without any modification. This was consistent with the British colonial policy of ensuring the general uniformity of law throughout the British empire.²⁵

(c) *English Law that was received was to be Applied subject to Local Legislation*

Generally, English law was not applicable where there was local legislation governing a particular matter.

In 1833, the Straits Settlements were under the administration of the governor in Bengal and the Governor-General of India in Council was given the power to legislate for all territories administered by the East India Company which included the Straits Settlements. Therefore, the local legislation which applied in the Straits Settlements then was Indian Acts. In addition, the Imperial Acts applicable to India were also applied in the Straits Settlements.²⁶

In 1867, the Straits Settlements were made a separate Crown colony and came under the control of the Colonial Office in London.²⁷ Legislating for the Straits Settlements was taken over by the new Legislative Council of the Straits Settlements. This started the enactment of Straits Settlements Acts and Ordinances. However, to ensure legal continuity, the Government of the Straits Settlements Act provided that the laws in existence in the Straits Settlements as at the date of the transfer of the Straits Settlements to the Colonial Office in London would continue in force.

Thus, from 1867, the local legislations which the general reception of English law under the Second Charter of Justice was subject to were as follows:

- (a) Pre-1867 Indian Acts that had applied to the Straits Settlements;
- (b) Pre-1867 Imperial Acts that had applied to India;
- (c) Straits Settlements Acts and Ordinances;
- (d) Post-1867 Imperial Acts that applied to the Straits Settlements.²⁸

From 1942 to 1945, the Straits Settlements were occupied by the Japanese, but this did not affect the legal system of the Straits Settlements very much. The period of Japanese occupation was too short for any legal changes introduced by the Japanese administration to be entrenched. Further, all laws enacted by the Japanese during this period were repealed when the British regained control of the Straits Settlements after the war ended in 1945.

In 1946, the Straits Settlements were disbanded and Singapore became a separate colony. Since then, Singapore had its own legislative body. Between 1946 and 1962, several Singapore Acts and Ordinances were promulgated. In 1963, Singapore became a

²⁵ Helena HM Chan, *The Legal System of Singapore*, 1995, at 9.

²⁶ Helena HM Chan, *The Legal System of Singapore*, 1995, at 10.

²⁷ This was pursuant to the Government of the Straits Settlements Act 1866, 29 & 30 Vic c. 115.

²⁸ Helena HM Chan, *The Legal System of Singapore*, 1995, at 11.

constituent state of the Federation of Malaysia. Malaysian federal legislation was thus applicable in Singapore between 1963 and 1965. In 1965, Singapore achieved independence and the Parliament of the Republic of Singapore has since enacted a large body of legislation. All this legislation constitutes local legislation to which the general reception of English law is subject.

Continuing Reception of English Case Law

It is to be noted that while there was a cut-off date for the reception of English statutes, there was none for English case law. Thus, English common law or case law continued to be received in Singapore even after 1826.

Specific Reception of English Law

Other than the general reception of English law under the Second Charter of Justice which imported English case law and pre-1826 English statutes, English law was also received in specific areas through specific reception provisions and Imperial Acts. The most significant example of specific reception of English law was the continuing reception of English law on mercantile matters under section 5 of the Civil Law Act (Cap. 43, 1988 Rev Ed.).²⁹

Section 5 of the Civil Law Act

Section 5 of the Civil Law Act³⁰ provided for the continuous reception of English commercial law into Singapore.

²⁹ As stated by Andrew Phang, *Reception of English Law in Singapore: Problems and Proposed Solutions* (1990) SALJ 20 at 31, there are a few other specific reception provisions that deal with rather more specialised areas of the law. They include section 5 of the Criminal Procedure Code (Cap. 68, 1985 Rev Ed.), section 101(2) of the Bills of Exchange Act (Cap. 23, 1985 Rev Ed.) and section 85 of the Women's Charter (Cap. 353, 1985 Rev Ed.).

³⁰ Section 5 of the Civil Law Act reads as follows:

Law of England to be observed in all commercial matters

5.—(1) Subject to this section, in all questions or issues which arise or which have to be decided in Singapore with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law with respect to those matters to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any law having force in Singapore.

(2) Nothing in this section shall be taken to introduce into Singapore —

- (a) any part of the law of England relating to the tenure or conveyance or assurance of, or succession to, any immovable property, or any estate, right or interest therein;
- (b) any law enacted or made in the United Kingdom, whether before or after 5th October 1979 —
 - (i) giving effect to a treaty or international agreement to which Singapore is not a party; or
 - (ii) regulating the exercise of any business or activity by providing for registration, licensing or any other method of control or by the imposition of penalties; and
- (c) any provision in any Act of Parliament of the United Kingdom where there is a written law in force in Singapore corresponding to that Act.

(3) For the purposes of this section —

- (a) the law of England which is to be administered by virtue of subsection (1) shall be subject to such modifications and adaptations as the circumstances of Singapore may require; and
- (b) a written law in force in Singapore shall be regarded as corresponding to an Act of Parliament of the United Kingdom under subsection (2)(c) if (notwithstanding that it differs, whether to a small

Although the colonial courts had established that under the Second Charter of Justice only pre-1826 English law was received, in practice post-1826 English statutes continued to be applied in commercial matters because the local bench and bar were English-trained.³¹ This practice was recognised in the Straits Settlements by section 6 of the Civil Law Ordinance 1878, which directed the courts to apply the current English law to mercantile issues unless there was local legislation governing the matter. This provision survived several re-enactments of the Civil Law Ordinance and was section 5 of the Civil Law Act before it was repealed in November 1993.

The interpretation of section 5 caused much difficulty. There was uncertainty in ascertaining the exact scope of commercial reception. The problem was in determining whether a particular English statute was applicable in relation to a particular case. There were two Privy Council decisions in 1928³² and 1933³³, which provided different interpretations of the ambit of that section. This problem together with the growing concern that British membership in the European Economic Community might develop English mercantile law in directions unsuited to Singapore led to the amendment of section 5 in 1979³⁴ and finally its repeal in November 1993. Section 5 was repealed by the Application of English Law Act (Cap. 7A).

D. APPLICATION OF ENGLISH LAW ACT

Today, all the difficulties with section 5 of the Civil Law Act are past. With the enactment of the Application of English Law Act (AELA) in November 1993, the application of English law in Singapore is clarified not only with respect to specific reception but also general reception. The AELA is a landmark Act that eradicates, once and for all, the uncertainty surrounding the applicability of English statutes in Singapore, commercial or otherwise.³⁵

The AELA has two main objectives. Firstly, it clarifies the application of English law, particularly English statutes, as part of the law of Singapore and removes the considerable uncertainty that existed in that regard. Secondly, it makes Singapore's commercial law independent of future legislative changes in the United Kingdom.³⁶

extent or substantially, from that Act) the purpose or purposes of the written law are the same as or similar to those of that Act,

³¹ Helena HM Chan, *The Legal System of Singapore*, 1995, at 13.

³² *Seng Djit Hin v Nagurdas Purshotumdas & Co* [1928] AC 444.

³³ *Shaik Sahied bin Abdullah Bajera v Sockalingam Chettiar* [1933] AC 342.

³⁴ See Helena HM Chan, *The Legal System of Singapore*, 1995, at 14, and Singapore Parliamentary Reports, Vol 39, 21 September 1979, cols 445-446. See also Singapore Parliamentary Reports, Vol 61, 12 October 1993, col 610. Professor S Jayakumar, Minister for Law, said at the Second Reading of the Application of English Law Bill in October 1993 that although section 5 was amended in 1979 in an attempt to reduce the uncertainty as to its scope of application, that amendment did not go far enough and the time had come for the repeal of that section altogether.

³⁵ Andrew Phang, *The Singapore Legal System – History, Theory and Practice*, (2000-1) 21 Sing LR 23 at 28. At the Second Reading of the Application of English Law Bill in Parliament in October 1993, Professor S Jayakumar, Minister for Law, aptly described the Bill as “one of the most significant law reform measures since [Singapore's] independence”. See Singapore Parliament Reports, Vol 61, 12 October 1993, col 609.

³⁶ See Singapore Parliament Reports, Vol 61, 12 October 1993, col 609.

The first objective is met by repealing section 5 of the Civil Law Act³⁷, specifying authoritatively which English statutes are to apply or continue to apply subject to the necessary modifications³⁸, and providing that in the event of inconsistency between a provision of an English statute and a provision of a local Act, the local Act shall prevail³⁹.

The second objective is met by providing that the continued application of English common law, including the principles and rules of equity, is subject to qualifications of suitability to the circumstances of Singapore and its inhabitants and to such modifications as those circumstances may require⁴⁰, and providing that except as provided in the AELA, no other English enactment shall be part of the law of Singapore⁴¹.

E. OTHER LEGAL INFLUENCES

Although the main foundations of the Singapore legal system are English in origin, there were other influences. For example, the Singapore Penal Code and Evidence Act are Indian in origin. The Singapore Companies Act is closer to the Australian than the English model. This phenomenon of borrowing from multiple legal sources is not unique as every legal system, to varying degrees, contains features or ideas borrowed from others at different points in time.⁴²

³⁷ Clause 6 of the Application of English Law Bill 1993 (No. 26 of 1993).

³⁸ Section 4 read with the First Schedule specifies the English statutes which are to apply or continue to apply in Singapore subject to the necessary modifications. A number of such modifications are set out in subsection (4). Part I of the First Schedule preserves the application of three Imperial Acts while Part II specifies thirteen English commercial Acts which will apply or continue to apply in Singapore. Part III of the First Schedule makes certain amendments to the English commercial Acts to bring them in line with local legislation and circumstances.

³⁹ This is provided in section 4(3).

⁴⁰ Section 3(2).

⁴¹ Section 5(1).

⁴² Helena HM Chan, *The Legal System of Singapore*, 1995, at 20. See also Andrew Phang, *The Singapore Legal System – History, Theory and Practice*, (2000-1) 21 Sing LR 23 at 29.