

LEGAL SYSTEMS IN ASEAN – SINGAPORE

CHAPTER 2 – SOURCES OF LAW

Leonard **GOH** Choon Hian^{*}
Advocate and Solicitor of Singapore

A. INTRODUCTION

Modern day Singapore started as a British colony in 1819. It remained a British colony for nearly 150 years. Chapter 1 has more details.

Unsurprisingly therefore, English law continues to have a significant influence on Singapore law to this day. One important aspect of this is that Singapore adopts the English common law system. This comprises both “*written law*” and “*unwritten law*”.

Written law is basically law enacted by a body with legislative powers. Section 2(1) of Singapore’s Interpretation Act (Cap. 1) defines “*written law*” to mean:

“the Constitution and all previous Constitutions having application to Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore.”

In other words, written law consists of:

- (a) The Constitution;
- (b) Acts of Parliament;
- (c) Ordinances; and
- (d) Subsidiary Legislation.

Law that is not written is just the opposite. It is not enacted. In Singapore, unwritten law comes from:

- (a) Case law (i.e. law made by judges when deciding cases); and
- (b) Custom.

We will examine these 6 categories below.

B. WRITTEN LAW

The Constitution

The Constitution came into force on 9 August 1965, the day of Singapore’s independence from the Federation of Malaysia. It currently has 15 parts and 5 schedules. The Constitution primarily sets out the fundamental principles and basic framework of the organisation of the State. It also prescribes the fundamental rights of the individual vis-à-vis the State.

^{*} 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.

The Constitution is the supreme law of Singapore. Any law which conflicts with the Constitution is void. Singapore courts can strike down any legislative or executive acts if they go against the Constitution.

The Constitution can be amended. Generally, at least two-thirds of elected Members of Parliament (MPs) must support the amendment at the second and third readings of the Bill to amend the Constitution. However, some provisions of the Constitution also require at least two-thirds of voters at a national referendum to support the amendment as well. An example is Article 6 which prohibits the surrender of Singapore's sovereignty as an independent nation.

Acts of Parliament

These are laws called statutes (or sometimes legislation) made by the Singapore Parliament. They are second in hierarchy after the Constitution. They cannot be inconsistent with the Constitution. Section 2(1) of the Interpretation Act defines "Act" or "Act of Parliament" to mean:

"an Act of the Parliament of Singapore and includes any Ordinance or Act of Singapore or Malaysia having the force of law in Singapore".

Acts usually only provide the basic legislative framework to implement a particular policy of the Government. The administrative and operational details are then fleshed out in subsidiary legislation (see heading "***Subsidiary Legislation***" below for more details).

Acts of Parliament start as Bills which are introduced in Parliament. Every Bill has to be read three times in Parliament. Parliament also has to debate them. At the third reading, Parliament will vote whether to pass the Bill. Majority vote decides.

Bills passed by Parliament (with a few exceptions) will then be sent to the Presidential Council for Minority Rights. This Council has to ascertain whether the Bill disadvantages any person because of his race or religion. The Bill will be sent to the President of Singapore for his assent if the Council submits no adverse report, or if two-thirds of Parliament nevertheless vote to send the Bill to the President despite the Council's adverse report. The Bill becomes law once the President of Singapore gives his assent.

Each Act is given a specific chapter number. The Interpretation Act is Chapter 1 (abbreviated as "Cap. 1"). Chapter numbers of other Acts are mostly assigned according to alphabetical order. For example, the Accountants Act is Cap. 2, the Administration of Muslim Law Act is Cap. 3, the Adoption of Children Act is Cap. 4 and so on.

There are now around 400 Acts of Parliament in force (including Ordinances). Anyone can access them *free of charge* online at <http://statutes.agc.gov.sg>. This is the website of the Attorney-General's Chambers of Singapore.

The influence of English law remains strong, especially in commercial statutes. The most significant example is Parliament's passing of the Application of English Law Act in November 1993. This Act lists the English statutes which continue to apply in Singapore. There are 2 categories. The first are Imperial Acts as follows:

- (a) Territorial Waters Jurisdiction Act 1878
- (b) Straits Settlements and Johore Territorial Waters (Agreement) Act 1928

(c) Maritime Conventions Act 1911

These 3 Acts are reprinted as part of the revised edition of Singapore statutes. They can be found under the heading “*Imperial Acts*” on the website <http://statutes.agc.gov.sg>.

The second category are English statutes relating to commercial laws. There are 13 of them (in alphabetical order):

- (a) Carriage of Goods by Sea Act (now re-enacted as the Bills of Lading Act)
- (b) Corporate Bodies’ Contracts Act
- (c) Factors Act
- (d) Marine Insurance Act
- (e) Mercantile Law Amendment Act
- (f) Minors’ Contracts Act
- (g) Misrepresentation Act
- (h) Partnership Act
- (i) Policies of Assurance Act
- (j) Sale of Goods Act
- (k) Supply of Goods Act
- (l) Third Parties (Rights Against Insurers) Act
- (m) Unfair Contract Terms Act

These Acts are also reprinted as part of the revised edition of Singapore statutes. They can similarly be accessed under the heading “*English Acts*” on the website <http://statutes.agc.gov.sg>.

Parliament has also looked to other Commonwealth jurisdictions when enacting certain statutes. For example, Singapore’s Companies Act has provisions from both UK and Australian Companies’ legislation. It also has many similarities to the Malaysian Companies Act of 1965. Singapore’s Penal Code is largely based on the Indian Penal Code. Singapore’s Goods and Services Tax Act has adopted provisions from both the UK Value Added Tax Act and the New Zealand Goods and Services Tax Act.

Interpretation of Statutes

Statutes are to be interpreted purposively. In other words, choose an interpretation which best gives effect to Parliament’s intention/purpose. Section 9A(1) of the Interpretation Act states:

“In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.”

Parliament’s intention/purpose is almost always its intention/purpose at the time the law was enacted.

Sections 9A(2) and (3) of the Interpretation Act expressly allow certain extrinsic materials to help ascertain the meaning of a provision. These include (i) the explanatory statement to a Bill, (ii) the Minister’s speech at the second reading of the Bill in Parliament, and (iii) the official reports of the Parliamentary debates of the Bill.

In 1999, the Singapore Court of Appeal (Singapore's highest court) added an important extension on interpreting statutes. It decided that one can read a provision purposively even if the provision itself is not ambiguous or inconsistent (*Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1). This is an example of law made by Judges when deciding cases (see heading "**Case Law**" below for more details).

Ordinances

Ordinances are counterparts of Acts of Parliament. The difference is that they were enacted before Singapore became an independent nation in 1965. "*Ordinance*" is defined in section 2(1) of the Interpretation Act to mean:

"any Ordinance of Singapore, and includes any Ordinance of the Colony of the Straits Settlements, any Ordinance of the Colony of Singapore or of the State of Singapore and any Proclamation having the force of law in Singapore".

Singapore's legislative history prior to 1965 is briefly as follows:

- (a) 1834 to 1867: Indian Acts and pre-1867 Imperial Acts applicable to India.
- (b) 1867 to 1942: Straits Settlements Acts and Ordinances.
- (c) 1942 to 1945: Japanese legislation (all repealed after the war).
- (d) 1946 to 1963: Singapore Acts and Ordinances, and Imperial Acts enacted between 1867 and 1963.
- (e) 1963 to 1965: Malaysian federal legislation plus Singapore State legislation.

There are still Ordinances in force today. Most however have now been revised and renamed as Acts. Those still called Ordinances can be found under the heading "*Private Acts*" on the website <http://statutes.agc.gov.sg>. Many of these "*Private Acts*" concern institutions of a religious or charitable character.

Subsidiary Legislation

Subsidiary legislation is the last in the hierarchy of Singapore's written laws. However, they are no less important. They are enacted under a single parent Act or Ordinance. Their function is to fill in the administrative and operational details not covered by the parent statute itself.

In other words, subsidiary legislation is an extension of its parent Act or Ordinance. Hence, they cannot conflict with the provisions of the parent statute. They also cannot exceed the boundaries prescribed in the parent statute.

Subsidiary legislation has an advantage over statutes. It can be brought into force and amended far quicker. This is because subsidiary legislation need not be enacted by Parliament. But it has to be sent to the Presidential Council for Minority Rights. Just as it does for Bills passed by Parliament, the Council has to similarly determine whether the subsidiary legislation disadvantages any person because of his race or religion.

Subsidiary legislation can take many forms. Section 2(1) of the Interpretation Act defines "*Subsidiary Legislation*" to mean:

"any order in council, proclamation, rule, regulation, order, notification, by-law or other instrument made under any Act, Ordinance or other lawful authority and having legislative effect".

Below is a brief explanation of these different types of subsidiary legislation:

- (a) “*Regulations*” are general and substantive in nature. They can expand on the substantive provisions of the parent Act. For example, Regulations 49 and 50 of the Goods and Services Tax (General) Regulations list the conditions a tourist must satisfy to get a refund on the Goods and Services Tax he paid on goods he bought in Singapore.¹
- (b) “*Rules*” deal with procedural matters (e.g. court procedure, how to obtain licences and so on).
- (c) “*Orders*” make special provisions or directions about certain things, persons or classes of persons (e.g. “[name of bank] is hereby approved as an “approved bank” for purposes of section 13(1)(t) of the Income Tax Act”).
- (d) “*Notifications*” or “*Notices*” are quite similar to “*Orders*”. However, Notifications/Notices focus more on public information (e.g. “The standard time in Singapore shall be 8 hours in advance of Greenwich mean time”²).
- (e) “*By-laws*” regulate activities within a limited area (e.g. a town council) or members of a particular group (e.g. a society).

¹ Regulations 49 and 50 of the Goods and Services Tax (General) Regulations (Cap.117A, Rg 1, 2001 Rev Ed.) state:

“Eligibility for tourist refund

49. An individual is eligible to receive a refund of the tax on the goods from a taxable person under the scheme if —

- (a) he has in the 24 months immediately preceding the date of purchase of the goods been present in Singapore for not more than 365 days in the aggregate;
- (b) he is neither a citizen nor a permanent resident of Singapore;
- (c) he is not a member of the cabin or flight crew of the aircraft on which he is departing out of Singapore; and
- (d) he has not, in the 6 months immediately preceding the date of purchase of the goods, been at any time employed in Singapore.

Conditions for tourist refund scheme

50.—(1) A tourist shall only be entitled to the refund of the tax under the scheme if he satisfies the following conditions:

- (a) the tourist makes and duly completes an application for a refund of the tax on such application form as the Comptroller may determine;
- (b) the goods are to be brought out of Singapore to another country as the tourist's hand or accompanied luggage on the same flight on which he is travelling except in the circumstances specified in sub-paragraph (c);
- (c) if the tourist has insufficient accompanied luggage allowance, he may bring the goods out by unaccompanied luggage by checking them in at the unaccompanied luggage counter within 12 hours before the announced time of departure of his flight;
- (d) the tourist shall submit the application form together with the goods to the proper officer of customs at the Goods and Services Tax Refund Inspection Counter at the Changi International Airport or Seletar Airport, as the case may be, for inspection and endorsement of the application form before the goods are checked in or brought into the aircraft as hand luggage;
- (e) the goods shall not be brought out of the premises of the Changi International Airport Departure Check-in Hall or the Seletar Airport Passenger Terminal, as the case may be, after the application form has been endorsed by the proper officer of customs;
- (f) the goods must be purchased no earlier than 2 months before the goods are brought out of Singapore to another country;
- (g) after the application form has been endorsed, the tourist shall not part with possession of the goods or give it to any other person except to the counter staff for checking in; and
- (h) the tourist shall write on the appropriate box allocated for this purpose in the application form the flight number on which he is departing with the goods before submitting it to the proper officer of customs at the Goods and Services Tax Refund Inspection Counter at the Changi International Airport or Seletar Airport, as the case may be.”

² See “Singapore Standard Time Notification” made under the Interpretation Act (Cap.1, N 1, 2000 Rev Ed.).

- (f) “*Proclamations*” declare the legal status of certain people or things. This results in the provisions of the parent Act applying to the people or things in question (e.g. “I [name and designation] do hereby proclaim, by virtue of the powers conferred upon me by section 355(2) of the Companies Act, that [name of company] be an investment company”. The company will now be subject to the regulatory provisions under Part XI Division I of the Companies Act).
- (g) “*Orders in Council*” are no longer relevant today. They were used when Singapore was a British Colony.

The number of pieces of subsidiary legislation differs widely from Act to Act. Some Acts have no subsidiary legislation whatsoever. Others have over a hundred.

C. UNWRITTEN LAW

Case Law

Case law is the most important source of unwritten law in Singapore. A key feature is the doctrine of *stare decisis* (i.e. binding precedent). This takes 2 forms. The first is that a higher court’s decision binds a lower court. In other words, a lower court must follow a higher court’s decision on a similar matter. Thus, the High Court must follow Court of Appeal decisions. Similarly, Subordinate Courts must follow High Court and Court of Appeal decisions.

The second is that courts *normally* (but not invariably) follow their previous decisions. In other words, the Court of Appeal will usually follow previous decisions of the Court of Appeal; the High Court will usually follow previous decisions of the High Court and so on.

Stare decisis is a unique feature of common law. It aims (i) to ensure similar cases are given similar treatment, and (ii) to promote legal certainty and orderly legal development. At the same time however, not every aspect of a decision is binding. Only the *ratio decidendi* is binding. The *ratio decidendi* is the principle of law the Judge uses in arriving at his decision together with his reasons.

It is not always easy to distil the *ratio decidendi* of a case. Judges sometimes give their views of law in passing which are not directly related to the dispute at hand (called *obiter dicta*). *Obiter dicta* are not strictly binding as such. But they are not worthless either. Such *dicta* can be highly persuasive in subsequent cases dealing with those points of law.

Singapore court decisions are not the only source of case law. English cases still remain highly influential, in particular those:

- (a) on common law issues; and
- (b) which interpret English statutes adopted or followed by Singapore.

Cases from other Commonwealth countries are also referred to sometimes. For example, Australian company law cases are persuasive for Singapore company law, and Indian criminal cases are persuasive for Singapore criminal law.

Law Reports

Easy access to these court decisions is of prime importance. This necessitates a comprehensive, regular and efficient system of law reporting (although not every decision can be reported). Singapore court decisions are available from the late nineteenth century to the present day.

The Singapore Law Reports (“SLR”) is currently the main source of reported Singapore Supreme Court (i.e. Court of Appeal and High Court) decisions. The SLR was first published in 1992. It had 2 volumes of decisions that year. Since 1999, the SLR has reported 4 volumes of decisions each year. One such decision is the *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1 case cited under the heading “**Acts of Parliament**” above. The citation “[1999] 2 SLR 1” means “the year 1999, Singapore Law Reports volume 2 page 1”.

The SLR now reports Singapore Supreme Court decisions from 1965 onwards. Another publication called the Malayan Law Journal also has Singapore Supreme Court decisions before 1992.

Custom

Singapore received English law under the Second Charter of Justice in 1826 subject to 3 qualifications. One was that English law should be modified in its application so as not to cause injustice and oppression to the local people.

Family law was the main ‘beneficiary’ of this qualification. Chinese, Malay and Hindu customary law soon trumped English law in this area. In 1961, the Women’s Charter was passed. It unified family law for all etho-religious groups except Muslims. For Muslims, the Administration of Muslim Law Act enacted in 1968 governs their family and other related matters.

The Application of English Law Act preserves this ‘no injustice/oppression’ qualification. Section 3(2) provides that insofar as the common law of England (including principles and rules of equity) was part of Singapore law up to 11 November 1993, it continues to be in force in Singapore:

“so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.”

D. CONCLUSION

The sources of Singapore law are many and varied. Many are a legacy of Singapore being a former British colony. Nevertheless, the past is only one aspect. Laws need constant modifications to suit changing economic, social and political situations. At the end of the day, what counts is that the rule of law reigns and remains supreme.