

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 as a trading post 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 sparsely inhabited by about a thousand inhabitants, mostly indigenous Malays with some Chinese as well. There were about 20 to 30 Malays in the entourage of the Temenggong, who was an official of the Johore Sultanate.

In 1824, the Sultan of Johore and Temenggong ceded Singapore to the British.³ The British East India Company thereby acquired full sovereignty in perpetuity over Singapore. Apart from Singapore, Penang and Malacca⁴ 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 Presidency.⁵

In 1825, 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 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.

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 Y L Tan, 'A Short Legal and Constitutional History of Singapore' in *Essays in Singapore Legal History* (Singapore Academy of Law; Marshall Cavendish Academic 2005) 27.

² Tan, 'A Short Legal and Constitutional History of Singapore', *ibid* 29.

³ 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 ...'.

⁴ Now generally referred to in Malaysia as Pinang and Melaka.

⁵ Penang had been a separate Presidency since 1805.

⁶ Indian Salaries and Pensions Act 1825 (6 Geo IV, c 85; UK).

⁷ Helena H M Chan, 'Legal History' in *The Legal System of Singapore* (Butterworths Asia 1995) 2.

⁸ Tan, 'A Short Legal and Constitutional History of Singapore' (n 1) 36.

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.

During World War II 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 1946,¹¹ the Straits Settlements were disbanded. 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.¹²

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.¹³

General Reception of English Law (Before the Enactment of the 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 proper court system was established in Singapore. The Second Charter of

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

¹⁰ Tan, 'A Short Legal and Constitutional History of Singapore' (n 1) 42.

¹¹ 9 & 10 Geo VI, c 37 (UK).

¹² Chan, 'Legal History' (n 7) 3; see also Tan, 'A Short Legal and Constitutional History of Singapore' (n 1) 43.

¹³ Chan, 'Legal History' (n 7) 4.

Justice abolished the old court which had served only Penang and created a new court to serve Penang, Malacca and Singapore.¹⁴

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 did not expressly 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, the date of the Second Charter of Justice, was introduced into the Straits Settlements by the Second Charter. In the well-known case of *R v Willans*,¹⁵ the Recorder, Sir Benson Maxwell, 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'.¹⁶

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, 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'.¹⁷

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.¹⁸

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 received;¹⁹
- (b) English law that was received was to be applied subject to local religions, manners and customs;²⁰ and

¹⁴ *ibid* 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.

¹⁵ (1858) 3 *Kyshe's Reports* 16 (Supreme Court, Straits Settlements).

¹⁶ *ibid* 37.

¹⁷ Chan, 'Legal History' (n 7) 6.

¹⁸ *ibid*.

¹⁹ *Choa Choon Neo v Spottiswoode* (1869) 12 Ky 216, 221 (Supreme Court, Straits Settlements).

²⁰ *ibid*.

- (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.

Only English Law of General Policy and Application was to be Received

In 1875, in a case called *Yeap Cheah Neo v Ong Cheng Neo*,²¹ the Privy Council endorsed a ruling by the Supreme Court of the Straits Settlements in an earlier case called *Choa Choon Neo v Spottiswoode*²² and held 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’.²³ Hence, for pre-1826 English law to be applicable in Singapore, it had to be of general policy and application.

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 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*, the Recorder, Sir Benson Maxwell, was of the view that the Charter had not authorised the modification of English law to accommodate local custom and usage.²⁴ 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.

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.²⁵ For example, Chinese polygamous marriages were recognised so as to allow secondary wives and their children to be provided for under the English Statute of Distribution of 1670.²⁶

However, modification was not allowed where it impinged on British commercial interests. In areas of law such as contract, commercial law, procedure and evidence, English law of general application applied without any modification.

²¹ *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381 (Privy Council on appeal from the Straits Settlements).

²² *Choa Choon Neo* (n 19).

²³ *Yeap Cheah Neo* (n 21) 394.

²⁴ *Willans* (n 15) 31–33.

²⁵ Chan, ‘Legal History’ (n 7) 9.

²⁶ 22 & 23 Car 2, c 10: see *Cheang Thye Phin v Tan Ah Loy* [1920] AC 369 (PC on appeal from the Straits Settlements); *Khoo Hooi Leong v Khoo Hean Kwee* [1926] AC 529 (PC on appeal from the Straits Settlements); *Khoo Hooi Leong v Khoo Chong Yeok* [1930] AC 346 (PC on appeal from the Straits Settlements).

This was consistent with the British colonial policy of ensuring the general uniformity of law throughout the British empire.²⁷

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 enacted by the Parliament of the United Kingdom which extended to India were also applied in the Straits Settlements.²⁸

In 1867, the Straits Settlements were made a separate Crown colony and came under the control of the Colonial Office in London.²⁹ Legislating for the Straits Settlements was taken over by the new Legislative Council of the Straits Settlements, which began enacting its own Straits Settlements Acts and Ordinances. However, the Indian Acts and Imperial Acts in existence in the Straits Settlements continued in force.

Thus, from 1867, the local legislation which the general reception of English law under the Second Charter of Justice was subject to was as follows:³⁰

- (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; and
- (d) Post-1867 Imperial Acts that applied to the Straits Settlements.

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 constituent state of the Federation of Malaysia. Malaysian federal legislation was thus applicable in Singapore between 1963 and 1965. In

²⁷ Chan, 'Legal History' (n 7) 9.

²⁸ *ibid* 10.

²⁹ This was pursuant to the Government of the Straits Settlements Act 1866 (n 9).

³⁰ Chan, 'Legal History' (n 7) 11.

1965, Singapore achieved full independence and the Parliament of the Republic of Singapore has since enacted a large body of legislation. Up to 12 November 1993 when the Application of English Law Act³¹ came into force, all this legislation constituted local legislation to which the general reception of English law was subject.

Reception of English Common Law

The Singapore legal system follows the English common law model.³² This means that Singapore adopts legal rules, concepts, institutions and traditions that apply to other common law jurisdictions. In particular, pronouncements about the law made in court judgments are considered as binding law, and are collectively known as the common law. In laying down these legal rules, the Singapore courts often apply legal rules and concepts from judicial precedents from the United Kingdom and other countries, sometimes in a modified form.³³ Some areas of law such as administrative law (the law governing the activities of public bodies), contract law and tort law (the law relating to wrongful acts of a non-criminal nature) are mostly based on common law rules.

Common law rules are subordinate to Singapore's statutory laws, that is, statutes enacted by the Singapore Parliament and other bodies with legislative powers, and subsidiary legislation issued by the Executive.³⁴ The courts play an important role in interpreting and applying these statutory rules,³⁵ and may refer to or develop the common law where the statutes do not deal with a particular point.

The view has been taken that the Second Charter of Justice provided for both the reception of English statutes and common law up to the date of the Charter, that is, 27 November 1826.³⁶ Common law rules introduced by courts of the United Kingdom after that date were no longer automatically part of the common law of Singapore, but could be applied by the local courts if they saw fit.

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.³⁷ The most significant example of specific reception of English law

³¹ Chapter 7A, 1994 Revised Edition (hereafter AELA).

³² Gary F Bell, 'The Singapore Legal System in Context – Whither the Concept of the National Legal System?' in *The Singapore Legal System* (Kevin Y L Tan ed, 2nd edn, Singapore University Press 1999) 1.

³³ *ibid* 5.

³⁴ Chan, 'Source of Law' (n 7) 107.

³⁵ *ibid* 109.

³⁶ Andrew Phang Boon Leong, 'The Second Charter of Justice: Its Intermediate Offspring' in *From Foundation to Legacy: The Second Charter of Justice* (Singapore Academy of Law 2006) 19–22.

³⁷ See, for example, the Criminal Procedure Code (Cap 68, 1985 Rev Ed), section 5; the Bills of Exchange Act (Cap 23, 1985 Rev Ed), s 101(2); and the Women's Charter (Cap 353, 1985 Rev Ed), s 85, now all repealed: see Andrew Phang, 'Reception of English Law in Singapore: Problems and Proposed Solutions' (1990) 2 *Singapore Academy of Law Journal* 20, 31.

was section 5 of the Civil Law Act,³⁸ which directed the courts to apply the current English law to mercantile, or commercial, issues unless there was local legislation governing the matter. In other words, the section provided for the continued reception of English commercial law into Singapore.

The interpretation of section 5 caused much difficulty. There was uncertainty as to how to determine whether a particular English statute was applicable in a particular case. Two Privy Council decisions in 1928³⁹ and 1933⁴⁰ 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, finally led to section 5 being repealed by the Application of English Law Act in November 1993.

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 (hereafter AELA), the application of English law in Singapore has been 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.⁴¹

The AELA has two main objectives. First, 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.⁴²

The first objective was met by repealing section 5 of the Civil Law Act.⁴³ The AELA then specifies authoritatively which English statutes are to apply or continue to apply subject to some modifications,⁴⁴ and provides that in the event

³⁸ Cap 43, 1988 Rev Ed.

³⁹ *Seng Djit Hin v Nagurdas Purshotumdas & Co* [1928] AC 444 (PC on appeal from the Straits Settlements).

⁴⁰ *Shaik Sahied bin Abdullah Bajeraï v Sockalingam Chettiar* [1933] AC 342 (PC on appeal from the Straits Settlements).

⁴¹ Andrew Phang, 'The Singapore Legal System – History, Theory and Practice' (2000–2001) 21 *Singapore Law Review* 23, 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': *Singapore Parliamentary Debates, Official Report* 12 October 1993, vol 61, col 609.

⁴² Jayakumar, speech during the Second Reading of the Application of English Law Bill, *ibid*.

⁴³ AELA (n 31) s 6(1).

⁴⁴ The AELA, *ibid* s 4 read with the First Schedule specifies the English statutes which are to apply or continue to apply in Singapore subject to modifications. A number of such modifications are set out in s 4(4). Part I of the First Schedule preserves the application of three Imperial Acts while Part II specifies 13 English Acts relating to commercial matters which apply or continue to apply in Singapore. Part III of the First Schedule makes certain amendments to the English Acts to bring them in line with local legislation and circumstances.

of inconsistency between a provision of an English statute and a provision of a local Act, the local Act shall prevail.⁴⁵

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 require,⁴⁶ and providing that, except as provided in the AELA, no other English enactment shall be part of the law of Singapore.⁴⁷

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 Code⁴⁸ and Evidence Act⁴⁹ are Indian in origin. The Companies Act⁵⁰ has been reformed several times over the years, taking inspiration from similar statutes in Australia, Canada, Hong Kong, New Zealand and the United Kingdom.

English law and the laws of other foreign jurisdictions may also influence the development of the common law. Although English law has traditionally been favoured by Singapore courts, nowadays such law will not always be adopted, particularly when it conflicts with decisions from the courts of other jurisdictions. For example, in the area of the conflict of laws, the *Abouloff* rule⁵¹ which has been repeatedly affirmed by the English courts,⁵² was rejected by the Canadian⁵³ and Australian courts.⁵⁴ The Singapore Court of Appeal chose to follow in the footsteps of the Canadian and Australian courts by rejecting the *Abouloff* rule in the context of intrinsic fraud.⁵⁵

⁴⁵ AELA, *ibid* s 4(3).

⁴⁶ *ibid* s 3(2).

⁴⁷ *ibid* s 5(1).

⁴⁸ Cap 224, 2008 Rev Ed.

⁴⁹ Cap 97, 1997 Rev Ed.

⁵⁰ Cap 50, 2006 Rev Ed.

⁵¹ This rule states that so long as fraud is alleged by the defendant, an issue can be reopened despite the lack of fresh evidence: *Abouloff v Oppenheimer & Co* (1882) 10 QBD 295 (Court of Appeal, England & Wales).

⁵² See, for example, *Owens Bank v Bracco* [1992] 2 AC 443 (House of Lords, United Kingdom).

⁵³ *Jacobs v Beaver Silver Cobalt Mining Co* [1908] 17 OLR 496 (Court of Appeal, Ontario, Canada).

⁵⁴ *Keele v Findley* [1990] 21 NSWLR 444 (Supreme Court, New South Wales, Australia).

⁵⁵ *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515 (Court of Appeal, Singapore).

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.⁵⁶

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

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⁵⁶ Chan, 'Legal History' (n 7) 20; see also Phang, 'The Singapore Legal System' (n 41) 29.