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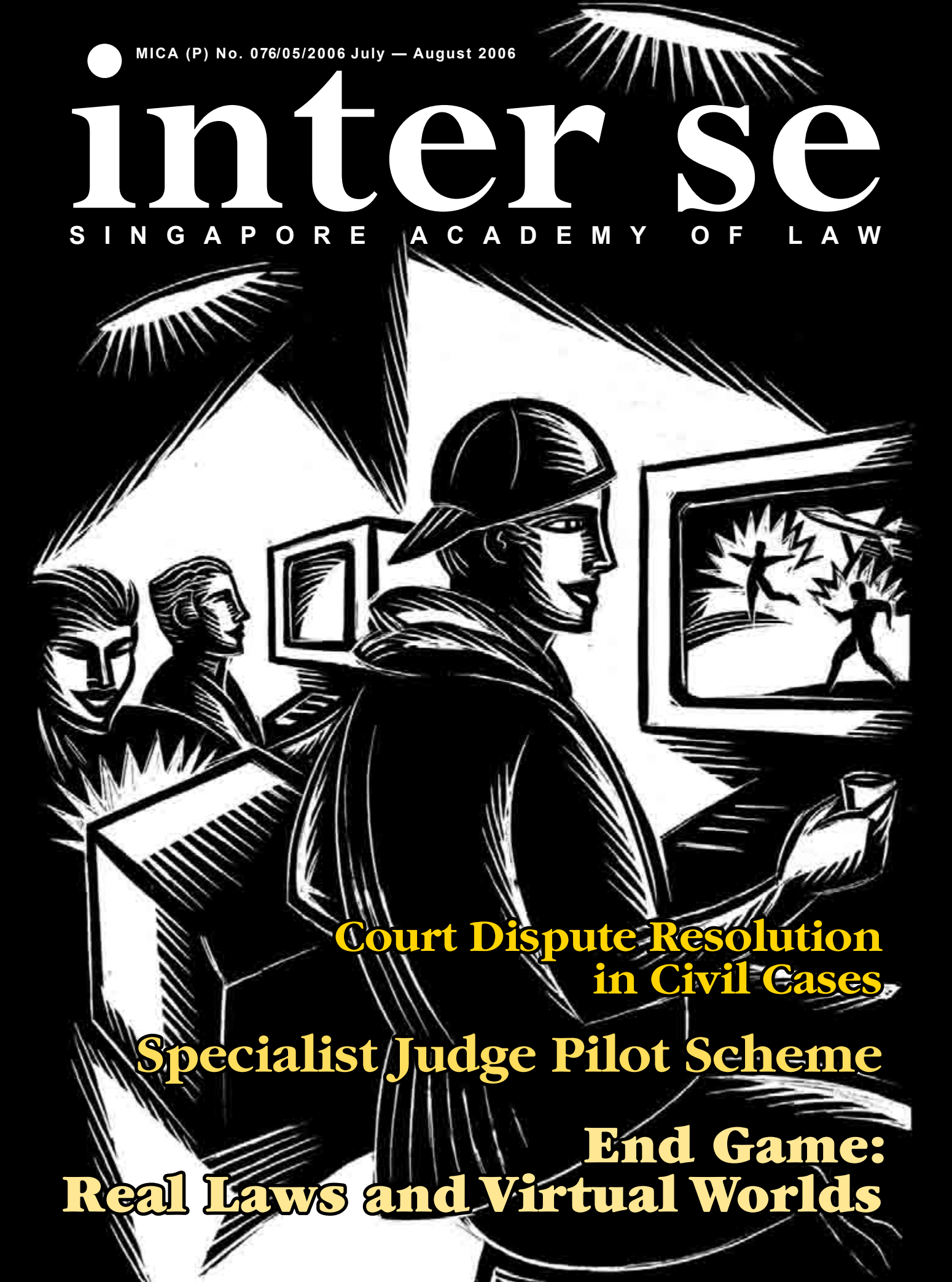
inter se

SINGAPORE ACADEMY OF LAW



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About The Bistro

The Academy Bistro specialises in fine fusion cuisine by our renowned Executive Chef Jimmy Chok. Available from Mondays to Fridays, are set-lunch menus with a lively selection of starters, main courses and desserts. The menu selections are changed weekly to keep lunches at The Bistro interesting and innovative for both first-time and repeat patrons. Indulge in a three-course meal at $30 + 5% GST or enjoy a no less satisfying two-course meal at $25 + 5% GST. Come experience fusion with flair at The Academy Bistro.

JIMMY CHOK EXECUTIVE CHEF

The hands behind the fusion feasts, Jimmy Chok, recently released his first cookbook titled *Simple: Cuisine of a New Generation*, published by Marshall Cavendish. Besides his full-time career as executive chef at The Academy Bistro, the founder of the former Salt restaurant also teaches cooking classes and caters for private functions.

In the May-June issue of *Inter Se* this year, the Honourable the Chief Justice Chan Sek Keong remarked: "The face of justice in the Subordinate Courts is the face that the majority of defendants and litigants see." Consonant with this reality, the Subordinate Courts has in place a number of programmes to ensure that the role it plays in the administration of justice is ever sensitive to the legal and social needs of those who come before it.

The Primary Dispute Resolution Centre ("PDRC") of the Subordinate Courts is an avenue of alternative dispute resolution for parties in civil disputes. The PDRC was set up as a way of affording parties to a dispute headed for trial, a means of resolving the dispute by reaching an amicable settlement tailor-made to their requirements. The programme has been a cost-efficient and practical solution to resolving disputes before such disputes turn unnecessarily unpleasant in an adversarial court environment. Then, in May this year, the Subordinate Courts launched the Family Relations Centre ("FRC"). The FRC has been set up in recognition of the deeply personal and sensitive nature of family and juvenile justice which makes family-related disputes not just legal matters to be dealt with according to the letter of the law, but community issues that have to be managed with a view to preserving the human relationships involved.

In this issue of *Inter Se*, we take an in-depth look at the above programmes that embody the Subordinate Courts' nuanced role as court of law, practical-minded problem-solver and, occasionally, social worker.

Most obviously, the Subordinate Courts is the forum of justice that most legal practitioners will participate in. This makes the Subordinate Courts well-placed to initiate greater interaction between the Bar and the Bench, and its latest initiative does exactly that. The Subordinate Courts' Specialist Judge pilot scheme is an innovative way to acknowledge and tap into the expertise of legal practitioners, in the administration of justice. Under this scheme, well-respected members of the legal profession or academia are appointed as specialist judges to preside over certain cases selected to be heard by them because of their specialist knowledge of the law involved. We hear from three leading legal minds involved in the scheme, on the implications of such a programme on law, practice and Bench-Bar relations.

Serene Wee
Director/Chief Executive Officer
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Conflict is the product of imperfect human relationships. The law, its rules and regulations, is a key element in the prevention and, when that is not possible, the management of conflict in society. In this issue of *Inter Se*, we look at conflict management and resolution from the perspective of the Subordinate Courts whose proximity to daily human social interaction is reflected in the scale and breadth of matters that come before it that require more than just a literal assessment of rights and obligations. Yet, society is organic and in constant change. New sources of conflict evolve as human interaction evolves. In a world increasingly mediated by technology, the growing popularity of virtual gaming has resulted in real-world conflicts arising from "virtual crimes". The question then, is what are the implications for the growth and development of the law as the divide between real and virtual is, increasingly, breached?

AN INSIGHT INTO COURT DISPUTE RESOLUTION IN CIVIL CASES: THE COURT'S PERSPECTIVES

By LAURA LAU AND MARVIN BAY, DISTRICT JUDGES, SUBORDINATE COURTS

COURT DISPUTE RESOLUTION: AN OVERVIEW

In civil cases where the defendant has filed a defence and the parties appear to be headed for trial, the Primary Dispute Resolution Centre ("PDRC") of the Subordinate Courts provides an alternative to litigation, by facilitating amicable settlements. This is done away from the courtroom, in an informal and non-confrontational setting, where the parties are free to express their views and to negotiate a settlement with the assistance of a settlement judge and not the trial judge. The opportunity to discuss and negotiate is particularly important where the parties are bound by family, neighbourly and working relationships. Early settlement helps to restore harmony and to preserve these important relationships. A settlement too, may be crafted to take into account the peculiar interests or concerns of one or more of the parties, which a judgment or court order may not be able to achieve.[1] There would be substantial savings of time and costs for all parties involved.[2] Adjudication should, as far as possible, be a last resort. Whilst there are undeniably benefits to be gained from early settlement, it must be stressed that, ultimately, the decision to settle or not lies with the parties.

The Primary Dispute Resolution Centre at the Subordinate Courts.

Civil disputes for which settlement conferences ("CDR") are conducted at the PDRC may be divided into two broad categories:

(a) Non-injury motor accident ("NIMA") cases; and
(b) Civil disputes other than NIMA cases.

This categorisation is necessary for a number of reasons: first, NIMA cases are regulated by a pre-action protocol embodied in the Subordinate Courts' Practice Direction 4 of 2002 as amended by Practice Direction 6 of 2003 which provides for early discovery and negotiations even before commencement of action; secondly, negotiations in NIMA cases are conducted directly with the defendants' insurers and rarely are the defendant-drivers involved; thirdly, the bulk of NIMA cases are spread amongst a cluster of law firms acting for the major insurers.

1 The Attorney-General at the opening of Legal Year 1996 said: "Mediation has all the virtues absent in litigation and arbitration. The process, to succeed, requires some give and take by both parties, whatever they believe their legal rights may be. But, as a mediated settlement is the result of the voluntary agreement of each party, it can only come about if each party believes that he has gained something from it. Both can come out of it with a sense of personal satisfaction."

2 A survey done in May 2006 shows that 84% of the respondents were satisfied with the services provided by the PDRC and 91% indicated that CDR sessions were helpful in resolving cases.

NIMA CASES

The amended Practice Direction No 4 of 2002 ("the Practice Direction") introduced a case management and costs regime for NIMA litigation, applicable to writs filed on or after 1 January 2002. Any plaintiff contemplating legal action on or after 1 January 2002 must first comply with the pre-action protocol. Hence, by the time a writ is filed, the parties should, in the majority of cases, have already served on each other documents relevant to the issues of liability and quantum. After the writ has been served, PDRC will fix a CDR session approximately eight weeks after the filing of the memorandum of appearance. If a second or third session is necessary, these would be held within the following eight weeks. If the matter is not settled by the third session, directions will be given for the conduct of the trial.[3] In order to optimise finite resources at the PDRC for all court users, it has become necessary for the timelines prescribed in the Practice Direction to be enforced in a more robust manner.

Essentially, the PDCR employs the best practice models of early neutral evaluation and facilitative mediation in CDR. In the context of NIMA disputes, the settlement judge carries out early neutral evaluation by giving indications on liability which though not binding, form the basis of negotiations between the plaintiffs' and the defendants' insurers. Indications on liability are, therefore, an integral part of the CDR process.

Given that the objective of the pre-action protocol is to promote early settlement and that it may be prejudicial to the plaintiff if the CDR process is unduly protracted, counsel should be fully prepared to present their respective cases for court indication at the first session. As re-indications are generally avoided (unless exceptional circumstances are shown), it cannot be over-emphasised that all relevant facts and scenarios should be fully and accurately presented for consideration by the settlement judge. This is especially important in view of the limited number of CDR sessions and timelines prescribed by the Practice Direction.[4] To this end, counsel should ensure that they do the following before the first CDR session:

(a) Read the file and study the General Insurance Association of Singapore ("GIA") reports, sketch plan (if any), survey reports and coloured photographs of the scene of accident (if any) and of damage to the vehicles involved.
(b) Interview the driver and independent witnesses (if any) and bring their statements to CDR.
(c) Ascertain the outcome of police action (if any) and where the driver has been convicted of a traffic offence, obtain the charge and statement of facts.
(d) Particularly for chain collisions, check for the outcome of any related action and seek instructions as to whether the parties agree to abide by that outcome.
(e) Draw a clear sketch plan on the indication form and include sufficient details to identify the vehicles involved, the direction of travel, significant road features such as U-turns, pedestrian crossings, parking lots *etc*, and the point of impact on each vehicle to enable the settlement judge to visualise the accident at a glance. The gist of each party's version as gleaned from the GIA reports should also be written on the indication form.

In instances where the settlement judge is unable to ascertain which of the two conflicting versions is the more probable, he is likely to indicate that both the plaintiff and the defendant should share liability equally. This usually occurs where photographs of the damaged vehicles, being the only objective evidence available, do not throw light on the question of liability. Whilst such an indication may, understandably, appear

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3 Interestingly, 76% of the respondents to the survey done in 2006 indicated that at least four CDR sessions are required to resolve a NIMA case in contrast to the three CDR sessions recommended in the Practice Direction.

4 The Practice Direction provides for the first CDR session to be held eight weeks after the filing of the memorandum of appearance. If the matter cannot be settled by the third CDR, the matter will be directed to proceed for trial.

inequitable to the party who is not at fault, it is nevertheless a fair indication given the constraints of the circumstances. In most cases and especially where the claim is small, it would be prudent for the parties to seriously consider a settlement on the basis of such an indication, rather than to assume the risk of litigation at trial where costs may well exceed the value of the claim.

The second CDR is usually fixed three to four weeks after the first. Counsel should not wait till the week before the second CDR to seek instructions and to start negotiations, in which case, the second CDR will in all probability be a "wasted" session. Apart from seeking early instructions, it is also pertinent that counsel do not merely convey to their clients the settlement judge's indication without adding their own input. A dispute is usually brought to CDR because there is a wide gulf between the plaintiff's expectations and what the defendant's insurers are willing to pay him. It would be helpful to the clients, both plaintiff and insurer alike, if they are appraised of the basis or reasons for the indication (*eg* photographs of vehicle damage support one version rather than the other), and their own lawyer's opinion as to whether the indication should be accepted. Counsel should bear in mind that they are engaged for their expertise in the field.

Where a party is unable to accept an indication, the settlement judge would, in the second session, need to know why and what counsel has done in advising the client. It may well turn out that opposing counsel, having a better appreciation of a party's difficulties, may be more conciliatory and willing to compromise. Alternatively, the settlement judge may be able to assess whether it is worthwhile to call the drivers and even independent witnesses to CDR for a better assessment or further discussion of the case.

Settlement during the second or subsequent CDR is sometimes achieved by putting both the plaintiffs and the defendant's insurers on standby to make and receive further proposals, often on the directions of the settlement judge. This method is usually used where the disparity between the parties has been reduced to a small margin. It is also more convenient than having the parties attend the CDR. In appropriate cases, the settlement judge may recommend that one or more of the parties absorb a slightly higher degree of liability in order to break a deadlock in negotiations. This is premised on the general understanding that determination of liability is not an exact science, even at trial. Moreover, the resolution of the case and the costs savings to be gained by early settlement would probably outweigh the amount "lost" by compromising.

Sometimes, where the parties have reached an impasse in their negotiations, the respective drivers, and occasionally their independent witnesses (if any), may be required to attend before the settlement judge for counsel to have a preview of the evidence that they would be proffering should the case proceed to trial. Such an exercise is evaluative in nature and counsel are given the opportunity to clarify (but not to cross-examine) the drivers' and witnesses' versions of events. The objective is to afford counsel a better perspective of the merits of the case by observing the parties and witnesses, and weighing the quality of the evidence so that they may advise their respective clients more effectively on the best course of action. This approach has proven useful in many cases where, by reason of the conflicting versions proffered, the settlement judge had initially indicated that the plaintiff and the defendant were to share liability equally.

Nine easy steps for making NIMA CDR sessions more fruitful

(a) Interview your clients and witnesses personally to get a good sense of their case. Do not rely on the accident report or your colleagues' notes alone.

(b) Ensure that your client is aware of the date and time of the CDR and is contactable for immediate instructions.

(c) In a chain collision, read all the connected reports to check whether suits against all the cars have been brought into the action. The CDR may be fruitless if any cars involved in the chain collision are left out.

(d) Be aware of the GIA's barometer of liability to get a better understanding of how an insurer is likely to view the case.
(e) Fill in the indication form completely and properly; do not leave out any salient facts.
(f) Participate fully in the indication process. If you do not agree or have reservations with any indication, let the settlement judge and opposing counsel know at this juncture to allow your basis to be fully explored.
(g) When writing an opinion or advice to clients, be detailed and systematic. This will help you to obtain a proper mandate and manage client expectations.
(h) Where an important document such as a survey or re-inspection report is not ready, you should notify the PDRC administrator more than three days before the first CDR to have your case re-scheduled. Do not wait until the CDR date to mention this problem and to ask for an adjournment, thereby incurring costs unnecessarily. Generally, this problem should not happen if the pre-action protocol has been fully complied with.
(i) If your clients are asked to attend a CDR, you should brief them in advance on what to expect from the session. This will help them be more focused and coherent, and thus be better able to fruitfully participate in the discussion.

POST-WRIT INSPECTION OF VEHICLES

Notwithstanding the pre-action protocol which provides for pre-writ inspection, vehicle re-surveys are frequently sought by insurers only in the midst of the CDR process. In such cases, it would appear that the issue of quantum has not been seriously considered by the insurer until the case is called on for CDR. These belated requests would inevitably stall negotiations for four to six weeks whilst awaiting the re-inspection and the completion of the report. Unless there are good reasons to show why pre-writ inspection could not have been carried out, the defendant may be required to compensate the plaintiff in costs for the delay. In cases where quantum rather than liability is the bone of contention between the parties, it will be worthwhile for counsel to explore settlement of liability by interlocutory judgment as a viable cost- and time-saving measure.

If an action is not settled by the third CDR, the settlement judge will give directions for the conduct of the trial. However, as savings in costs will diminish incrementally as the case progresses beyond the pleadings to the filing of affidavits of evidence-in-chief and then to set down, the settlement judge may be inclined to allow a "window" period for a further attempt at settlement, failing which the parties are to comply with directions for the exchange of their affidavits within three to four weeks, objections (if any) to be filed the week thereafter, followed by setting down within the next two weeks. PDRC will continue to monitor the case via a status conference to ensure that these directions are complied with. Where there is non-compliance, unless orders may be imposed in appropriate cases. It is to be highlighted that the giving of directions does not mean that the door to an amicable resolution is shut. Quite often, the taking of a major step in the proceedings, such as the exchange of affidavit evidence and setting down, provides the catalyst to an amicable settlement when parties are "awakened" to the reality of a trial.

NIMA FOCUS GROUP

PDRC periodically engages in dialogue sessions with the various stakeholders to continually improve the CDR processes and better serve the needs of the court users. One of these stakeholders is the NIMA Focus Group. At a recent meeting of the NIMA Focus Group comprising of NIMA practitioners and the settlement judges, the general view amongst the lawyers' panel was that a reasonable time for the CDR process to run its course should be about four months, with more time given for cases involving chain collisions or other more complex claims such as NIMA cases with an element of personal injury. It was also

suggested that within the four-month time frame, an average of three to five CDR sessions could be conducted. In this connection, lawyers acting for NIMA plaintiffs readily acknowledged that defendants' lawyers generally require more time in obtaining and finalising instructions as the latter are advising insurers that often have various levels of approval and accountability. This problem is compounded by the fact that defendants' lawyers are often briefed at a later stage than plaintiffs' lawyers and thus have a shorter lead time in preparing their cases for court indication at the first CDR. Problems in collating documents and procuring drivers' and witnesses' statements may also result in an indication being obtained only at a subsequent CDR.

Significantly, the lawyers confirmed that the number of CDR sessions have little or no costs implications for their clients, be they plaintiffs or defendants. Plaintiffs' lawyers' costs are fixed by the scale of costs set out in the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC"). These costs are predicated on the stage of the proceedings rather than the number of CDRs attended. Defendants' lawyers' costs on the other hand, are premised upon prior agreement with their insurer-clients as to the basis of computation on costs. They would usually be paid a fixed proportion of the costs payable to the plaintiffs' lawyers, and such costs are not adjusted by reference to the number of CDRs attended.

COSTS CONSEQUENCES ON BREACH OF PROTOCOL

Upon settlement of a NIMA action at CDR, the settlement judge will usually fix or indicate costs in accordance with the costs table as provided by the ROC. As the pre-action protocol was formulated with industry consensus and contains provisions for disclosure and timelines accepted by the industry, a breach of the protocol is, generally speaking, tantamount to unreasonable conduct which may attract costs consequences pursuant to O 59 r 7 of the ROC.[5] However, this does not mean that the settlement judge will not view breaches in their appropriate context. In this connection, breaches of a technical nature (as opposed to substantive breaches where, for instance, disclosure is withheld) will probably result in minimal reduction in costs.

COSTS ON SETTLEMENT AT CDR

Whilst offers to settle and Calderbank letters[6] may be considered by the settlement judge when fixing costs, they are usually not given their full effect in the circumstances of CDR. This approach is consistent with the decision of the Court of Appeal in *SBS Transit Ltd v Koh Swee Ann* [2004] 3 SLR 365 where the court endorsed, at [21], the view that "the discretion of the court as to costs, and as to what weight is to be given to a Calderbank letter, cannot be usurped". Hence, a Calderbank letter does not govern or fetter the court's discretion in respect of costs. It is also to be noted that a settlement at CDR, albeit achieved after indications are given by the settlement judge, is not an adjudication on the merits of the case. Quite often, a compromise is reached on the suggestion or persuasion of the settlement judge. It would then be unfair to fully penalise a party in costs because the settlement has fallen short of the offer to settle or Calderbank letter.

PERSONAL-INJURY CASES

Settlement conferences for personal-injury cases at the PDRC are regulated by a post-action protocol which covers all personal injury claims exceeding $10,000 except for medical negligence and industrial-accident cases. The protocol is intended to facilitate the expeditious and timely negotiation,

5 Order 59 r 7(1) states: "Where it appears to the Court in any proceedings that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party."

6 These are offers made in a letter written "without prejudice save as to costs" or "without prejudice" but subject to an express reservation of the right to refer to the letter on the issue of costs should the action proceed to judgment. The use of such a procedure was commended by the English Court of Appeal in matrimonial proceedings in *Calderbank v Calderbank* [1976] 3 All ER 586. See *Singapore Civil Procedure 2003* (Sweet & Maxwell Asia, 2003) at para 22/1/6.

settlement and disposition of personal-injury cases that fall within the above parameters. It is a post-action protocol as personal-injury cases differ from NIMA cases by their sheer diversity of types, or claims and categories of personal injuries that may be suffered. Personal-injury cases are generally recognised as more complex and varied in nature to be dealt with by a common and simple pre-action protocol.

The primary instrument of this protocol is a specially-designed form, which is to be completed before the CDR session by solicitors in conduct of the case. The form requires the parties to provide the following:

(a) the presence and identity of independent witnesses;
(b) whether any police action has been taken against any party in the proceedings and the nature of such police action (whether a warning, composition or a prosecution), and the extent of the penalty (quantum of fine, imprisonment or disqualification); and
(c) whether there were any related actions, and the manner upon which these actions were settled or disposed.

The latter part of the form takes the form of a questionnaire specially designed to address all possible permutations of the case, including road traffic accidents, fatal accidents, and claims involving loss of earnings or earning capacity. Plaintiff's counsel is required to specify whether certain documents usually required in these cases are available at or before the time the statement of claim is served.

Defendants are also given a corresponding duty to furnish certain documents four weeks after the defence has been filed. In short, the protocol aims to provide a rational and systematic means for essential documents to be discovered. It also provides the necessary platform for parties to "show their cards" and make an informed decision on settlement, thus facilitating settlements that are both expeditious and fair.

OTHER CIVIL CLAIMS

Apart from these, the other civil claims are differentially managed. Contract cases, for example, are not regulated by a protocol. Instead, the CDR process is usually initiated by counsel representing the disputing parties. Although requests for CDR may be made at any stage of the proceedings, it would be preferable to initiate the process after the close of pleadings when the costs incurred are still relatively low. Referral of cases to CDR is entirely voluntary – a settlement conference will not be held if the opposing party wishes to dispense with CDR. Alternatively, but less often, the court may, on its own motion, invoke O 34A of the ROC[7] and direct the parties to attend CDR.

Before the CDR session for claims other than those arising out of a road traffic accident, counsel need to supply opening statements, on a without prejudice basis, identifying the issues, and provide brief overviews of the supporting evidence and the applicable law. The parties will be required to attend and participate in the CDR from the first session. The active involvement of counsel and parties right from the start ensures that their minds are focused on the issues at hand. This approach affords counsel and parties an early opportunity to consider, carefully, the merits of their case.

It is not uncommon for the settlement judge to encounter cases where the parties' positions are diametrically opposite, such as where the plaintiff insists on being paid a substantial part of his claim and the defendant wants his counterclaim to be paid to him. In this respect, judges conducting the CDR would help the parties look beyond their allegations and counter-allegations, to concentrate objectively on the real issues at hand and then generate realistic proposals for settlement. Then again, parties may be at opposite poles because

[7] Order 34A r 1(1) provides: "Notwithstanding anything in these Rules, the Court may, at any time after the commencement of any proceedings, of its own motion direct any party or parties to those proceedings to appear before it, in order that the Court may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter." Order 34A r 2(1) provides: "Without prejudice to Rule 1, at any time before any action or proceedings are tried, the Court may direct parties to attend a pre-trial conference relating to the matters arising in the action or proceedings."

each asserts that he is speaking the truth. In such cases, having a key witness come to CDR to give his version of the events so that parties can assess for themselves the veracity of the witness, and the impact his evidence will have on the outcome of the case, may pave the way towards a settlement of the dispute. This approach is significant if the parties are relying primarily on oral evidence and there is little or no documentary evidence to corroborate their respective versions. However, in a case where both parties are depending solely on their own oral evidence, and little else, it would not be out of place for the settlement judge to appraise the parties of the risks they are taking by proceeding for trial. CDR, therefore, serves as a reality check by giving the parties a better understanding of court processes and matters such as the evidentiary burden.

MED-ARB AND CO-MEDIATION

For the resolution of civil disputes, besides CDR for NIMA cases, PDRC also provides other forms of CDR such as Mediation-Arbitration (popularly known as Med-Arb), Court Dispute Resolution International ("CDR-I"), and co-mediation with experts. Co-mediation with experts is essentially a co-mediation by a settlement judge with an expert appointed by the PDRC. PDRC provides help by engaging experts in causes of action which involve specialised areas and disciplines. The co-mediation with experts is provided free of charge to the parties. Med-Arb combines features peculiar to both mediation and arbitration. The parties involved first meet with a settlement judge who attempts to assist the parties in jointly reaching a solution regarding as many issues as possible. The remaining unresolved issues are then arbitrated upon (*ie*, the issues are brought before a registrar of the Subordinate Courts for determination, which will be binding on the parties). Subsequently, the matter will be sent back to the settlement judge who will have regard to the registrar's decision and bring the matter to a close.

CDR-I

The CDR-I regime is a co-mediation conducted by Singapore Subordinate Courts' judges and judges from other common law or civil law jurisdictions, namely, England, Australia, New Zealand, Norway and the United States of America. This process is carried out via real-time video-conferencing. CDR-I, like the other CDR processes, is provided without any cost to the litigating parties. It serves as a forum for additional judicial perspectives and views to be brought to bear on the disputes. CDR-I is confined to issues of fact, and is conducted using the Early Neutral Evaluation approach. The Singapore settlement judge will be the primary judge in the CDR process. The parties will be given a preview of the how their case might fare if they proceeded to trial. With a perception of how the court will resolve the matter and with a sense of the time, costs and implications of a litigated outcome, parties will be better appraised to make an informed decision to resolve the matter or to proceed to trial.

A comprehensive protocol regulates the exchange of submissions, pleadings and other salient documents by the parties well before the CDR-I session. The PDRC administrator will ensure that either physical or electronic copies of these documents are sent to the foreign judge before the CDR-I session. During the CDR-I session, the lawyers first present their respective cases. The direct parties and their witnesses are then given an opportunity to address the CDR-I court. The evaluation is usually given after a short conference between the co-mediating judges. The session then moves on to facilitative mode with the evaluation being used as a basis for parties to negotiate a settlement. Where practicable or necessary, caucus sessions can be held for the respective parties to candidly discuss and test the viability of their proposals. The co-mediating judges, at this juncture, will help to formulate practical solutions that best serve the interests of all parties.

MANAGEMENT OF MEDICAL NEGLIGENCE CASES

Recognising the enormous costs associated with medical negligence claims as well as the trauma and anxiety experienced by parties in protracted proceedings, PDRC has undertaken a special programme to promote the expeditious and fair settlement of these cases. By this programme, cases are rigorously monitored and parties will

be called to attend a settlement conference at the earliest possible stage to explore the possibility of settlement. This is with a view to setting parties in the right direction and frame of mind by addressing the possibility of settlement at the earliest stage and giving an impetus for parties and their counsel to systematically and constructively work on the case without increasing the degree of acrimony. The process is intended to provide the most optimal platform for discussion and resolution of the case.

An important aspect of the management process of such cases is to understand the motivations of plaintiffs and the defendants. Plaintiffs' principal motivations may not always be to seek damages or compensation. Some may resort to legal processes as a means to hold doctors and hospitals accountable for what they perceive as a failure to maintain professional standards of care. Yet others may be just seeking definitive answers for the failure of the advice, treatment or procedure to live up to their expectations.[8] Defendants' motivations may be equally multi-faceted; some may be motivated by a doctor who is anxious to protect his reputation or by a perception that a case is defensible. Defendants are, however, keenly aware that the costs of litigating a case through trial and appeal stages often exceed the actual payout, and so are usually keen to explore the possibility of settlement. The process therefore extends far beyond merely the clinical exercise of evaluating the factual matrix.

To facilitate the management and the conduct of CDR for medical negligence cases, the PDRC has instituted the following:

Appointment of a panel of medical experts

An important aspect in the management of medical negligence cases is the use of a panel of medical experts. These experts cover a range of 31 medical specialties and are appointed on a voluntary basis by a special arrangement with the Ministry of Health. These experts have been used in cases where an independent opinion is required to break an impasse or to resolve misgivings or doubts about an aspect of the case such as the prognosis, costs of future surgery, or probability and extent of recovery.

Facilitating meetings between defending doctors and patients or claimants

It is well documented that many claims arise out of poor communication within the doctor-patient relationship. Opening a channel of communication is therefore crucial in facilitating settlement. This is all the more so when any treatment has yielded adverse or unexpected results. Although it is rather "late in the day" after proceedings have commenced, a meeting between the patient, or his next of kin, with the doctor or doctors involved, in the privacy of the mediation chambers, can be a powerful cathartic or transformative experience. This is particularly so if the two sides have not had a chance to talk since the claim was brought, or even since the medical procedure or treatment was concluded. In such cases, the plaintiff, who is searching for answers, could have felt a sense of abandonment, or that the doctor did not care. On the other hand, the doctor involved would likely have been advised not to make any admission of fault, and hence have kept far away from his/her erstwhile patient.

Allowing the plaintiff to vent their feelings to understand their motivations

The mediation process gives the plaintiff the time and space to ventilate their feelings. It also provides an insight as to the motivation of commencing a medical negligence suit and an opportunity to assess, and recommend, the course of action for the resolution of the matter. In some cases, the plaintiff is primarily just seeking an explanation or an apology from the doctor.

MANAGEMENT OF HDB RE-POSSESSION CASES

The PDRC is also involved in the mediation of cases involving mortgage actions for the recovery of possession of Housing and Development Board (HDB) flats. CDR in such cases would be beneficial to both the banks which provided the loans and

[8] UK National Audit Report 2000/01 states that 40%–50% of the claimants really wanted an apology or to have a better understanding.

the flat dwellers (the mortgagors). In this respect, court dispute resolution would not only facilitate the resolution of a commercial dispute but also minimise the dislocation of the flat dwellers thereby avoiding undesirable social consequences for society. In these cases, mediation is invariably facilitative in nature since there would usually be no question of the liability of the lessees with regard to the unpaid mortgage instalments. Where the parties have approached the mediation process with transparency and good faith, the results have been very positive. The financial institutions have also been rational in seeing the benefits of imposing a structured scheme of instalments rather than insisting on proceeding to spend more money on enforcement proceedings.

CONCLUSION

With alternative dispute resolution ("ADR") and settlement conferences being an integral of the judicial process, a significant reduction of cases proceeding for hearing in the courts has been noted. ADR is, in fact, being actively promoted in Singapore. The Senior Minister of State for Law and Home Affairs, at the Opening of the Alternative Dispute Resolution Awareness Programme on 22 March 2003, remarked:

"We have a very good legal infrastructure and a world class judiciary. We aim to be a Regional Alternative Dispute Resolution Centre. Together with dedicated ADR institutions such as the Singapore Mediation Centre and the Singapore International Arbitration Centre, and industry-based organizations spanning all fields of human activity, we must all work together to nurture a strong and distinctive mediation culture and style characterized by highly qualified and experienced arbitrators and mediators of international standing."

What court users say about CDR at the PDRC

"The CDR process is an integral part of dispute resolution especially for road traffic accident matters. With the benefit of an indication on liability from the judges, parties are often able to settle quickly." – *Mr Akramjeet Singh, M/s Ang & Partners* –

"Most lawyers find the CDR sessions a useful way of achieving a mutually acceptable conclusion to civil disputes. Accident cases benefit most from CDR sessions – the views of and indications of liability by a settlement judge help most of us convince clients that the case can be resolved in a certain way." – *Mr Allan Heng, M/s Yap Kim Cheng & Co* –

"The CDR mechanism is, in most cases, an efficient way to dispose of cases with minimum acrimony, to the satisfaction of litigants and lawyers alike." – *Mr Riaz Qayyum, M/s Riaz, Ian Chang & Pat Quah* –

"The CDR forum has provided parties with a conciliatory means to obtain an objective preliminary assessment on liability." – *Mr Tan Aik How, M/s Hin Tat Augustine & Partners* –

"Since its inception, the CDR process has won over the confidence and trust of lawyers and clients alike as considerable amounts of time, effort and costs are saved as a result of speedy resolution of disputes. Today, there is an ever-growing dependence on the CDR process such that it has become an integral part of the civil justice administration system." – *Mr Abdul Salim A Ibrahim, M/s Assomull & Partners* –

"Generally, I have 98% cases settled at CDR ... Parties are more willing to settle when an indication is given by an independent body, meaning the settlement judge." – *Ms Linda Phua, M/s Ang & Partners* –

"The PDRC is an ideal forum ... providing a platform for an amicable resolution of a matter where both parties walk away from the experience feeling sufficiently satisfied with the outcome." – *Ms Constance Paglar, M/s ComLaw LLC* –

THE ESTABLISHMENT OF A FAMILY RELATIONS CENTRE

By KEVIN NG AND MARVIN BAY, DISTRICT JUDGES, SUBORDINATE COURTS

"Family and juvenile justice affects family relationships. The justice system and processes must be sensitive to the fact that we are not dealing with cases, but with people. By the time families and children come to the Court's attention, the problems are serious. With every divorce comes a corresponding emotional and psychological impact on the children, whose young lives are often torn apart as they witness the ensuing battle between their once loving parents. The scars can be deep and painful. Families affected by conflict, separation or divorce is a significant community issue.

The family and juvenile pathway, which was implemented in 2002, will be further strengthened. Towards this end a Family Relations Centre ('FRC') will be established to provide holistic, legal, relational and therapeutic solutions to divorcing couples in custody, matrimonial property and other ancillary matters ... By transforming the culture of family breakdowns from one of acrimony to one of co-operation, the FRC will serve as the front door for couples seeking help to unlock their implacable conflicts, resolve their disputes and rebuild marriages that have fallen apart. Family litigation will be less adversarial and more co-operative to help these families." – The Honourable the Chief Justice Chan Sek Keong on the occasion of the Subordinate Courts' 15th Workplan on 18 May 2006 –

INTRODUCTION

On 19 May 2006, the Subordinate Courts launched the Family Relations Centre ("the FRC"), a co-ordinated centre within the Family Court, to provide opportunities for families and couples to resolve their disputes in a non-trial setting. Situated at the fourth floor of the Family Court building, the FRC has fully-equipped mediation chambers; counselling, conference, and caucus rooms; as well as a dedicated registry. The ample waiting areas and meeting rooms are conducive for candid private discussions between counsel and client.

The FRC functions as an integral unit of the Family Court with a dedicated team of judges with extensive mediation experience and a multi-disciplinary team of psychologists, counsellors and support staff.

WHY THE FRC WAS SET UP

The FRC was conceived as a comprehensive response to the exponential growth in the number of cases coming to the Family Court. Over the past decade, the Family Court has seen an almost two-fold increase in the number of divorce, maintenance and family-violence cases. In 2005, the Family Court dealt with a caseload of 16,717 divorce, maintenance and family-violence cases, as compared to 9,402 cases in 1996.

The concept of the FRC is based on the recognition that matrimonial and family disputes

The Family Relations Centre at the Subordinate Courts.

An expeditious and fair settlement does not just save parties the legal costs and time spent in going for a full trial or hearing. It also brings closure and finality as there will be no appeal by a party disappointed or dissatisfied at trial. This goes a long way towards preserving a civil, if not gracious, relationship between the parties, which is especially important if there are children in the marriage.

are complex, and often not resolved by simply determining the legal issues or engaging in legal battles.

NATURE OF FAMILY CASES

Family cases often involve multiple underlying issues that are inextricably bound to the actual legal disputes. These issues often prevent parties from reaching consensual agreements. Furthermore, these families are often locked in a crisis situation that, when exacerbated by the stress of a life-changing event like divorce, may provoke behaviours that require multiple court actions such as family-violence applications, or custody and maintenance applications. To be truly effective in resolving them, the Family Court needs to address these issues on a global and multidimensional basis.

Interrelated issues in family cases can be dealt with more holistically and comprehensively at the FRC instead of parties having to attend multiple court sessions for different issues. With a more constructive and less adversarial approach of resolving relationship disputes, the FRC aims to reduce the emotional costs to families and children of conflict and divorce. For example, in divorce cases where children are involved, a parenting plan is more likely to be successful and satisfactory when both parents are ready to co-operate and before conflict has become entrenched.

To this end, the FRC seeks to foster a strong culture of co-operation and consensus, where parties in every contested dispute will make an attempt at resolving disputes amicably at the earliest possible time.

An expeditious and fair settlement does not just save parties the legal costs and time spent in going for a full trial or hearing. It also brings closure and finality as there will be no appeal by a party disappointed or dissatisfied at trial. This goes a long way towards preserving a civil, if not gracious, relationship between the parties, which is especially important if there are children in the marriage. At the FRC, parties are far less likely to suffer emotional estrangement or psychological damage than would be the case if the divorce had been bitterly fought.

USE OF MULTI-MODAL APPROACHES TO RESOLVE FAMILY CASES

The FRC utilises a multi-modal approach that aims to preserve family and matrimonial rights and responsibilities while protecting the wellbeing of the individual and their family members.

Resolution Conferences

The FRC provides Resolution Conferences facilitated by a Resolution Judge where parties and their lawyers are expected to participate actively in the process. The Resolution Judge's role is to evaluate the case and also mediate the dispute. By this, he assists parties to take a constructive

and co-operative approach in resolving their matrimonial issues in a systematic and structured manner. All confidential disclosures by parties cannot be used by the other should the matter proceed for a trial or hearing. The Resolution Judge, who is bound by a mediator's ethical code, will not participate in any subsequent trial or hearing if the matter cannot be settled.

Referral to support services

The Resolution Judge can, where appropriate, direct or refer the parties to complementary therapeutic strategies such as support counselling, parenting consultations or workshops, and other salient services that can reduce acrimony and promote healing to the parties and their children. The flexibility and responsiveness of this system means that the parties can avail themselves to more services and at an earlier point of the proceedings than otherwise possible. For example, where, despite having filed for divorce, parties feel that their marriage can be saved, the Resolution Judge can refer them for reconciliation counselling, which would improve their chances of a positive outcome.

Joint conferences

A key innovation of the FRC is use of Joint Conference mediation sessions, which are conducted by a Resolution Judge, and a psychologist or counselor. This multi-disciplinary team allows challenging cases to be discussed and evaluated on both legal and psychological dimensions. Joint conferences have been successfully used in settling a significant number of extremely complex and acrimonious divorce cases. Some of these cases were settled despite a bitter back history of numerous previous applications to, and appeals against decisions of, the Family Court. Settlements forged from Joint Conferences tend to be stronger and more robust, as they are more responsive to the underlying causes of the disputes and better address the respective areas of concern of the parties.

PROMISING EARLY INDICATIONS

A pilot study was done in October to December of 2005 involving 460 divorce cases which were referred for Resolution and Joint Conferences. Issues in these cases included grounds of contested divorce, custody, care and control of children, access to children, division of matrimonial property and assets, maintenance of wife and children, and legal costs. The settlement rate of these referred cases was 72%, after a total of 543 sessions had been conducted within this period. This was significantly higher than the Family Court's mediation settlement rate of 44% in the period immediately before the FRC pilot project.

The latest results are even more encouraging. In the first five months of this year, the settlement rates of cases mediated at FRC rose to 83%. The settlement rates for individual issues such as custody, care and control, and maintenance *etc*, was between 83% and 97%.

This is a clear indication of the potential that dedicated personnel and resources can achieve when combined synergistically within the FRC process. The FRC is steadily debunking the long held myth that Family Court cases are difficult to mediate and almost impossible to settle.

THE ROLE OF COUNSEL

The Family bar has been extremely supportive of this emphasis on a comprehensive and holistic approach to resolving family cases. Indeed, counsel have an essential role to play in the work of the FRC. Often in family cases, the lawyer is not just relied on to advise on the law, but acts as a confidant and pillar of support to the client. Lawyers are therefore in the best position to understand their clients' true motivations and what they are really looking for. They are also able to influence their clients not to take unrealistic, vindictive or extreme positions. Lawyers who look beyond strictly partisan or adversarial positions, and instead are able to objectively consider the best interests of the family, in particular the children, are of great help in the FRC's collaborative endeavour to find the best possible resolution for the parties.

In a recent case, both counsel worked together in putting together a workable solution that ultimately resulted in the reconciliation of a couple who were in the midst of divorce proceedings. The two senior Family lawyers involved were exultant with the outcome, which saved a marriage that had produced several children. One of them told the court, "Even lawyers can be social workers sometimes!"

APPOINTMENTS OF SPECIALIST JUDGES TO THE SUBORDINATE COURTS BENCH

By JOYCE LOW, DISTRICT JUDGE, SUBORDINATE COURTS

The Subordinate Courts has implemented a pilot project to appoint experienced and well-respected members of the legal profession or academia as specialist judges to preside over selected cases in the Subordinate Courts. This programme will allow the courts to benefit from the expertise of leading members of the legal community even while they retain their full-time occupations.

The use of part-time judges is not novel. In England, there is a long history of selecting qualified practitioners to serve on the Bench at various levels of the Judiciary, *eg* as deputy Masters and Registrars, deputy district judges, Recorders and deputy High Court judges. The importance of the part-time judiciary in the administration of justice is well-recognised and is a vital part of their current system of judicial appointments. In Australia, the numbers of appointments of part-time judges in state courts has rapidly increased in recent years. In New South Wales for instance, part-time appointments constituted a major part of the judicial branch. Most recently, legislation was passed in Hong Kong last year to provide for the appointment of part-time district judges after a successful pilot program to appoint part-time registrars.

In England, Australia and Hong Kong, the primary objective of appointing part-time judges is to improve efficiency and tackle real problems of growing case lists. In addition, it is used as a platform for part-time judges to prove themselves and secure a full-time position whenever there are vacancies. The subordinate nature of the part-time office is also reflected in the title of the appointment which is "deputy" or "acting" judges.

The scheme in Singapore has different objectives. Its main aim is to tap into the wealth of talent in the private sector to provide additional expertise to the Subordinate Courts bench and at the same time, give leading practitioners and academics a better insight to the workings of the Judiciary. The appointments of specialist judges will create an avenue for a more systematic cross-fertilisation of ideas between talented legal professionals of different backgrounds and expertise, thereby promoting a greater understanding between the Bench, Bar and academia, and improving our legal system. As an acknowledgment of the abilities of the office-holders, the title of the appointment is "Specialist Judge".

Specialist Judge Tan Chee Meng.

On 1 July 2006, Mr Tan Chee Meng SC was sworn in as the first Specialist Judge appointed under this scheme. The first case to be heard by Specialist Judge Tan Chee Meng involves a cluster of five related prosecutions arising from the collapse of a scaffolding wall at the Fusionpolis construction project, resulting in two deaths. Specialist Judge Tan, who started his career as a civil engineer and has an extensive practice in construction law, is well-placed to make meaningful contributions to the case. When asked about the skills he hopes to bring to his role as a specialist judge, Specialist Judge Tan commented: "I think I was appointed a Specialist Judge because of my engineering background and construction law practice. Having spent the first few years of my career as an engineer, I am very comfortable with technical issues and details. I look

The appointments of specialist judges will create an avenue for a more systematic cross-fertilisation of ideas between talented legal professionals of different backgrounds and expertise, thereby promoting a greater understanding between the Bench, Bar and academia, and improving our legal system.

forward to putting my engineering knowledge to good use and hopefully, will be able to expedite proceedings and make sound decisions, both from the legal as well as the technical perspectives."


Specialist Judge Tan Cheng Han.

More recently, Professor Tan Cheng Han SC was appointed as a Specialist Judge to hear the Informatics case which concerns charges of releasing financial statements overstating profit by the company's founder and its chief executive officer. Specialist Judge Tan Cheng Han is the current dean of the National University of Singapore's Faculty of Law and was a former partner at Drew & Napier LLC specialising in commercial disputes. When asked about the added perspectives that his academic background will afford him to the cases he hears, Specialist Judge Tan remarked: "The beauty of being an academic is that we have the luxury of time to think about the law and therefore will have an understanding of our specialist areas that few others will share to the same degree. Having said this, the law is so vast today that there are many areas that we will be far less familiar with and unlike many judges and practising lawyers who handle cases across a wide spectrum, the exposure of some academics may be narrower. A judge with an academic background may therefore have to work a lot harder initially in those other areas."

It is envisaged that future appointments may be drawn from a pool of experts in diverse areas of law, including complex commercial crime, corporate law, medical negligence, family law and intellectual property law. To start, two other leading legal minds, Mr Harry Elias SC and retired High Court judge Mr Goh Joon Seng have agreed to be part of the selection pool from which Specialist Judges will be appointed. Mr Elias SC who has some 41 years of litigation experience and who has been lead counsel in numerous high-profile criminal, commercial and defamation cases, shared that he was prompted to accept the invitation to be part of the pool of legal practitioners and academics who will be called upon as Specialist Judges as he sees the scheme as "a remarkable way to engage the profession in the practice of the profession" that constitutes "a reality engagement". In addition, he considers it a privilege and an honour to have been asked to participate. Mr Elias SC pointed out that the Specialist Judge scheme is a unique step towards improving Bench-Bar relations by encouraging a shared learning experience that will go towards fostering "a real and practical fusion of ideas" and a "better working relationship".


Mr Harry Elias SC.

The pilot judicial scheme will be reviewed at the end of the year and may be institutionalised if it is successful.

Additional reporting by Anita Parkash, Editor, SAL.

SPA-TACULAR AFTERNOONS

By SHERINA CHAN, ASSISTANT MANAGER, CORPORATE COMMUNICATIONS AND MEMBERSHIP DEVELOPMENT, SAL

Over two Saturdays in July, some 22 Singapore Academy of Law ("SAL") members and their friends were treated to pampering day-spa experiences as part of workshops conducted by TOUCHE on 15 July 2006 and 22 July 2006. The workshops were held at the recently-opened TOUCHE Bugis – an oasis of calm set in the middle of the busy Bugis shopping district. At over 2,000 square feet, TOUCHE Bugis boasts 16 treatment rooms split over two floors, including a treatment suite for couples keen for some private pampering, and a hydro-therapy treatment room.

SAL members were not disappointed as they stepped into the tranquil surroundings of the spa and were attended to by friendly staff who efficiently saw to it that everyone was given a comprehensive Scalar VideoMax Skin analysis as a prelude to the mini-facial treatments everyone later enjoyed. Before the facials however, members were whisked off to a demonstration of the Intensive Skin Exfoliation treatment, which utilises micro-dermabrasion technology to enhance oxygen production within the skin and stimulate collagen synthesis to firm-up skin and lighten blemishes, to reveal healthier-looking skin.

After being treated to a steamy, paraffin wax, silky-hand treatment, members were settled into the treatment rooms for their facials which ended with super-relaxing scalp and shoulder massages by TOUCHE's experienced therapists. At the end of the treatment, everyone was fresh-faced, visibly relaxed and looking forward to the next demonstration – a body-fat analysis using TOUCHE's advanced, computerised BF Body Evaluation apparatus.

Not even a less than flattering body-fat analysis, however, could shake members out of the good mood that the pampering afternoon had put everyone in. The workshop ended with a healthy, late lunch where everyone was happy to sit back and enjoy what can only be termed as a lazy well-spent afternoon.

WHAT MEMBERS SAID ...

It bettered my expectations – good and attentive service, really enjoyable and relaxing, and best of all there was no hard-sell. I certainly look forward to more of such events. Thanks so much for organising it.

– Ms Thong Huey Yann,
White and Case LLP –

Thanks for organising the event. It was a very pleasant and relaxing experience, especially since it took place outside of the "work" setting! Needless to say, my wife was persuaded to buy a package, so I'm going to be too poor to attend any other event for a time!

Thanks again!

– Mr Loo Choon Hiaw,
Loo & Chong –

JOURNAL OF CONTRACT LAW
CONFERENCE 2006
Contract and the Commercialisation of Intellectual Property

FRIDAY, 29 SEPTEMBER 2006
SINGAPORE MANAGEMENT UNIVERSITY

Jointly presented by
Singapore Academy of Law
Singapore Management University

Sponsors
Freehills
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CONFERENCE OVERVIEW

In an increasingly knowledge-based economy, intellectual property and confidential information form a large part of an individual's and organisation's asset base and commercial potential. The growth industry of knowledge, including its management, governance, and protection, demonstrates the core importance and power of this intangible mode of production. Yet, the ability to profit from the use (and assignment of the use) pivots on the careful marshalling of one's legal rights in the commercialisation process. Further, how do e-commerce and technology impact upon the freedom to contract in the midst of anti-competitive tendencies in an intellectual property ("IP")-driven world? What remedies are available when IP rights are breached?

This full-day conference, jointly organised by the Singapore Academy of Law and the Singapore Management University ("SMU"), seeks to engage and update participants on the rapidly developing areas of e-commerce, licensing of IP rights and confidential information, competition law restrictions on the freedom of contract, and remedies for breach of IP rights.

To be held in the new SMU city campus, this conference aims to provide participants with cutting-edge developments in these related fields of law in an holistic manner. There will be presentations by specialists from Australia, England, Singapore, and the United States.

The conference agenda comprises five key areas. Each area will feature one specialist presentation. To provide a balanced perspective of academic and practitioners' concerns, each presentation will also have two commentators, comprising an academic and a leading practitioner, followed by a panel discussion with conference participants.

The conference will explore the following key areas:

- Electronic commerce and the challenge of technology
- Licensing and assignment of intellectual property
* Licensing of confidential information
- Competition law restrictions on the freedom of contract in intellectual property
- Remedies for breach of intellectual property rights

GUEST-OF-HONOUR
The Honourable the Chief Justice Chan Sek Keong

SPEAKERS & COMMENTATORS INCLUDE

Professor John Carter
Professor of Commercial Law
University of Sydney, Australia, &
Consultant, Freehills

Dr Stanley Lai
Partner & Head of
Intellectual Property & Technology
Allen & Gledhill

Professor Raymond T Nimmer
Leonard Childs Professor of Law &
Co-Director, Intellectual Property
and Information Law Institute
University of Houston, Texas, USA

Dr Elisabeth Peden
Associate Professor of Law
University of Sydney, Australia, &
Consultant, Freehills

Mr Tan Tee Jim SC
Partner, Lee & Lee

Professor George Wei
Department of Law
Lee Kong Chian School of Business
Singapore Management University

Professor Charles Rickett
Sir Gerard Brennan Professor of Law &
Head of School, T C Beirne School of Law
University of Queensland

Professor Michael Furmston
Emeritus Professor of Law &
Senior Research Fellow
University of Bristol, England, &
Visiting Professor of Law
Singapore Management University

Assistant Professor Warren Chik
Department of Law
Lee Kong Chian School of Business
Singapore Management University

Assistant Professor Burton Ong
Faculty of Law
National University of Singapore

Ms Joyce A Tan
Managing Partner
Joyce A Tan & Partners

Assistant Professor Tham Chee Ho
Department of Law
Lee Kong Chian School of Business
Singapore Management University

Associate Professor Ng-Loy Wee Loon
Faculty of Law
National University of Singapore

CONFERENCE FEES

Fee includes 5% GST and conference materials. Lunch and tea will be provided.				
Students#	SAL Members		Non-members	
S$52.50	Bulk Rate*	Normal Rate	Bulk Rate*	Normal Rate
	S$170.10	S$189.00	S$236.25	S$262.50

applicable for full-time students or pupils. Refunds will not be entertained upon registration.
*applicable for three or more participants from the same organisation.

For more information on the Conference, please visit http://www.sal.org.sg/svcs_les20060929.
For enquiries, please contact Ms Serene Ong at 6332 4032 or e-mail les@sal.org.sg

SINGAPORE ACADEMY OF LAW

SMU
SINGAPORE MANAGEMENT UNIVERSITY

UPCOMING ENHANCEMENTS TO THE ELECTRONIC FILING SYSTEM'S FRONT-END

BY ANG CHING PIN, ASSISTANT REGISTRAR, SUPREME COURT

In keeping with constant efforts to improve the Electronic Filing System ("EFS") to better serve the needs of its users, a whole host of enhancements to the EFS's front-end was introduced in early August 2006. The slew of new EFS front-end features in this first tranche of enhancements includes the "Pack-n-Go" service, a new-look case file within which is included a tab that displays a history of hearings in the case, and an Adobe Acrobat version 7 Upgrade. These enhancements serve to increase the user-friendliness of the EFS front-end and promote greater efficiency in managing cases on the EFS.

The "Pack-n-Go" service is a novel development which provides for greater convenience and ease of access to documents in the EFS case file. This feature allows judges, judicial officers and lawyers to download all the documents in a case file onto a thumb drive with one simple click (hence the "pack" option). As such, parties no longer have to stay in their offices to access a case file in the EFS. Instead, the "Pack-n-Go" service enables parties to read any document from the case file from the comfort of their homes (or anywhere else) at any time of the day (hence the "go" option). It should be noted that the usual annotations on documents in the EFS case file will not be reflected on these downloaded documents unless the full version of Adobe Acrobat (with the EFS plug-in) is available on the alternative computer.

As for the new-look case file that displays a list of all hearings in the case, this feature will promote the usefulness of the EFS front-end as an information portal for lawyers. Lawyers

The EFS homepage.


The new main-menu page after EFS Login.

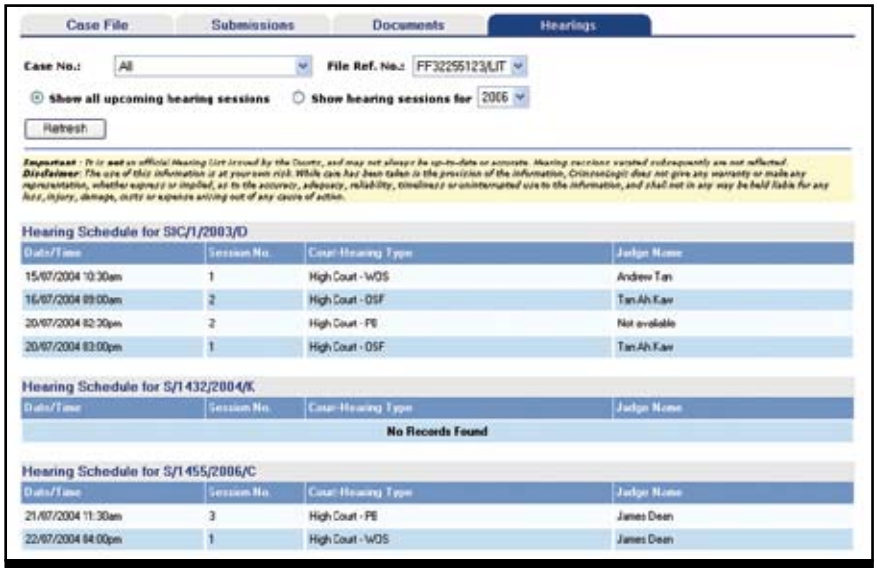
Documents packed to go – a new EFS service.

now have an upcoming hearing alert that displays (depending on context) either a list of upcoming hearings for the entire law firm or upcoming hearings for a particular case. The new-look case file contains a tab that collects a historical list of all hearings in a case. This is useful when tracking the progress and work done in a case.

With the new Adobe Acrobat version 7, EFS users can look forward to the migration of the PDF format from 1.3 to 1.6. Moreover, there are plans to shift the use of annotations on the documents in the EFS case file from proprietary annotations to Acrobat's native annotations. This feature aims at a gradual move away from the traditional reliance on annotations on documents. More importantly, it will facilitate the expedient transmission of documents from lawyers onwards to their clients and the use of documents outside of the EFS. Tied in with this is a promotion period during which CrimsonLogic has partnered with Adobe Acrobat vendors to offer licences for the Standard version of Adobe Acrobat software at a significant discount.

There are other plans to enhance the EFS front- end during the latter half of the year. The new case-centric database ("ccDB") provides for the presentation and consolidation of case-level information in just one interface. This reduces data entries on the EFS front-end and promotes greater sharing of case-level information between the courts and parties. An added advantage of the ccDB is that it increases the accuracy of statistical reports and information searches. Similarly, the "Immediate File-n-Serve" service will allow lawyers to file and serve court documents upon submission. This is unlike the standard "File-n-Serve" option which requires a short waiting period and court approval. Other planned enhancements of the EFS front-end include step-by-step guides in the creation of case files, the partial saving of draft submissions and increased alerts to lawyers about updates in their hearing schedules via SMS and e-mail.

Last but not least, EFS users can also look forward to upcoming promotional discounts for the usage of some EFS front-end services, namely, the SMS-alert feature and the service of documents facility. These promotional discounts will be extended for the period up to 31 December 2006.



The new-look case file that lists all hearings in a case.

TECH LAW WATCH

Tech Law Watch is a column brought to you by the Technology Law Development Group ("TLDG"), the SAL think-tank for research in and reform of technology law. Tech Law Watch hopes to identify and anticipate key trends and developments in technology law, and to promote dialogue between technology industry players as well as law practitioners from both private and public sectors. An online web forum at http://sal.infopop.net/3/OpenTopic has been launched together with this new column. Interested persons are invited to register as members of this web forum to contribute their views and comments for TLDG's consideration.

VIRTUAL CONFLICTS, REAL PROBLEMS

By GILBERT LEONG, LEGAL PRACTITIONER, AND JAY LEE

INTRODUCTION

In this article, we examine issues surrounding virtual games. These are games which are not generally played using tangible objects and tokens like a board or a dice but via computers and either against the computer itself or against other players who are also connected to the computer or system. Virtual games are also referred to as "online games". In today's context, virtual games are usually played over a computer network, most commonly the Internet.

There are many forms of virtual games. In the early days, these games were text based and could be played over slow Internet connections. These days, virtual games offer very rich graphics and are very complex in nature. Some companies, like Microsoft, have also begun to offer its customers the opportunity to turn their stand-alone home video-gaming machine (where the games are sold on pre-recorded discs) into a node on a network of home video-gaming machines so that consumers may play against others, even those living on the other side of the world.

Online gaming is big business. According to DFC Intelligence, the worldwide online game market is set to continue growing from $3.4bn in 2005 to over $13bn in 2011.[1] In the Asia-Pacific region, reports indicate that the market is expected to grow at a compound annual growth rate of 21% from 2006 to 2010 reaching $3.6bn by 2010,[2] largely driven by the run-away success of Massively Multiplayer Online Role-Playing Games ("MMORPG"). It is in this context that the IDA[3] has set out to position Singapore as Asia's foremost Digital Content Exchange Hub and, since 2003, has put in place a series of ambitious initiatives to attain its goals.

Through its Games Exchange initiative, IDA seeks to transform Singapore into "the" regional hub for processing, management and distribution of online games and services to Asia. In pursuit of this aim, IDA has highlighted Singapore's excellent telecommunications connectivity, financial and legal infrastructure. In particular, IDA has underscored the fact that Singapore's intellectual property rights ("IPR") protection regime ranks right at the very top.

But, IPR protection is simply one facet of the legal framework that is needed to bring order to these brave new worlds. Gamers and game

1 See, Simon Carless, "Analyst: Online Game Market $13 Billion By 2011" (6 June 2006) available on the Gamasutra website at <http://www.gamasutra.com/php-bin/news_index.php?story=9610> (accessed 22 July 2006).

2 See, "IDC Says Singapore Online Gaming Industry to Accelerate Beyond PC-Platform" (20 June 2006) available on the IDC website at <http://www.idc.com/getdoc.jsp?containerId=prSG20228706> (accessed 22 July 2006).

3 Infocomm Development Authority of Singapore.

developers worldwide are beginning to realise that online virtual worlds and the status of virtual properties therein are still languishing in a legal twilight zone. Simply put, what may be needed are rules to address uncertainties surrounding virtual property and virtual worlds. Being the top-ranked country for IPR protection counts for nothing if pressing issues facing the virtual community are not those concerned with intellectual property in the first place.

VIRTUAL PROPERTY

Virtual property can be defined as any asset collected by a player within a MMORPG for example, currency, land, weapons, clothing, power, characters and other goods. Within a MMORPG, these in-game items can be used, traded, exchanged or sold and therefore have "value" in the context of the game. The difficulties arise when these virtual goods attain a value in the real world such that a player would pay another in real world currency (or barter with tangible goods) so as to obtain the virtual property. Some authors have referred to this process as "commodification of virtual goods" and the argument is that when this takes place, real world legal intervention or regulation becomes inevitable.[4]

The key questions really are "is there such a thing as virtual property? And if so, who owns it?" The answers to these questions would impact on the resolution of virtual property disputes such as virtual theft, fraud and even the ability of game developers (or operators of the game) to terminate their game or services.

Virtual crimes

One of the more unfortunate offshoots of MMORPGs is exploding "virtual crime" rates. In South Korea, there was an astounding 22,000 claims of theft of virtual property reported to the police in 2004.[5] In 2003, a gamer in China who had his account on the game *Red Moon* hacked into, and lost all his weapons, took his case to court demanding compensation from the game company. The Chinese Court ruled in his favour in what was China's first virtual property dispute case.[6] Since then, the cases have been coming thick and fast. Virtual fraud is another growing problem as instances of gamers "scamming" others by receiving real money but not delivering the agreed virtual item(s) become increasingly commonplace.

At first glance, current real world laws (for example, Criminal Law) would be sufficient to handle these disputes between players *inter se*. However, this may not necessarily be true even in Singapore's context since the Penal Code is simply not geared up to address virtual property.[7]

The "property" debate becomes even more pronounced when gamers who have been wronged seek compensation from game developers (with the deeper pockets) as well as or instead of hunting down the offending virtual world thief/fraudster. Recognising property rights in virtual assets would open up game developers to this unforeseen liability for the economic losses suffered by gamers who have been wronged.

Several East Asian countries have passed legislation which acknowledge the existence and value of virtual property. For instance, South Korean

[4] Jack M Balkin, "Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds" 90 Va L Rev 2043 (2004) at 2045. Balkin sees (at 2060) "real-world commodification of virtual worlds" as "the single most important event in shaping the relationship between law and virtual worlds". Article available on the Virginia Law Review website at <http://www.virginialawreview.org/articles.php?article=42> (accessed 29 July 2006).

[5] Peter Brown, "Can Virtual Property Gain Legal Protection?", IP Law360 (9 February 2006), available at <http://www.brownraysman.com/pubs/articles/pdf/060209_IPL360.pdf> (accessed 29 July 2006).

[6] For a report on this case, see "Online Gamer in China Wins Virtual Theft Suit" (20 December 2003) on the CNN.com website at <http://www.cnn.com/2003/TECH/fun.games/12/19/china.gamer.reut/> (accessed 29 July 2006).

[7] The Penal Code (Cap 224, 1985 Rev Ed) does not define the term "property" but the phrase "moveable property" at s 22: "The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth." Note the reference to "corporeal" which is something that virtual property is not. Therefore, other sections such as ss 378 (theft), 390 (robbery) and 403 (dishonest misappropriation of property) may not apply since these sections deal with or touch upon "corporeal property". Interestingly, s 415 (cheating) simply mentions "property" and not "moveable property".

The key questions really are "is there such a thing as virtual property? And if so, who owns it?" The answers to these questions would impact on the resolution of virtual property disputes such as virtual theft, fraud and even the ability of game developers (or operators of the game) to terminate their game or services.

law recognises that virtual property is a valuable commodity and that this value is independent of the game's developer, likening virtual property to money deposited in a bank. Taiwan sees virtual property as electromagnetic records that are considered movable property in cases of fraud and theft, carrying a maximum sentence of thee years' imprisonment.[8] Whilst in Hong Kong, the police have a dedicated technological crime division that is well aware of the growing threat of virtual theft.[9] These laws punish perpetrators for offences against virtual property.

The status of virtual property may also impact game developers who are concerned that the extension (or some would say, creation) of rights in virtual property could impose financial obligations upon them to recompense gamers for economic loss when the game developers decide to discontinue the game. Considering that there was an estimated US$682,000.00 in sales of virtual gold on eBay for *World of Warcraft* ("*WoW*")[10] in October and November of 2005 alone, one can understand why game developers are clearly not enthralled by the idea that virtual property be accorded value in the real world and that this real world value be protected under law.

A recent report brought to attention the endeavours of two young local entrepreneurs who are aiming to set up an online bank for gamers to deposit their MMORPG game currencies.[11] "Bank Virtuel" (as they have named it) would offer all the services that real banks do, *ie* interest, loans *etc*, and would handle game currencies like the "gold" used in *WoW* and "simoleons" used in *The Sims Online*. However, the terms of service of any such venture would have to be subordinate to the terms of service of the respective online games. For instance, under its terms of service, Electronic Arts could terminate *The Sims Online* with a 90-day notice.[12] *WoW*'s developers, Blizzard, retain the "sole and absolute discretion [to] continue to provide the Service or license to third parties the right to provide the Service."[13] If these online games are closed down, withdrawn or even have their currencies "devalued", Bank Virtuel and its customers could well find its simoleons and *WoW* gold either worth less than before or worst, worthless.

In the real world, when a party fails to deliver the goods after having been paid for them, that party may be guilty of an offence (*eg* cheating). However, in a pure virtual crimes situation

8 Information obtained from Zhang Tingting and Daragh Moller, "Legislation Proposed to Protect Virtual Property" (26 January 2004) available on the China Internet Information Center website at <http://www.china.org.cn/english/2004/Jan/85502.htm> (accessed 29 July 2006).

9 See the Hong Kong Police Force website at <http://www.info.gov.hk/police/hkp-home/english/tcd/intro.htm#GamesTheft> (accessed 29 July 2006).

10 See Peter Brown, "Can Virtual Property Gain Legal Protection?", *supra* n 5.

11 Jane Chiapoco, "Turning a Profit from Virtual Money", *Today*, 03 May 2006 at p 37.

12 See the "important information" link on the Electronic Arts The Sims Online webpage at <http://www.ea.com/official/thesims/thesimsonline/us/nai/index.jsp> (accessed 29 July 2006).

13 See "World Of Warcraft Terms of Use Agreement" (2 June 2005) available on the World of Warcraft Community Site at <http://www.worldofwarcraft.com/legal/termsofuse.html> (accessed 29 July 2006).

(*ie* where an online character steals from or defrauds another whilst playing the game), the scenario described above may not be a crime at all. This is because one would need to take into account the rules of the game itself. Where a game expressly permits stealing and trickery as a "form of gameplay"[14] it would arguably be more difficult to bring a real world action for an incident occurring within the rules of the game. *Volenti non fit injuria*. But this is a contractual analysis which may fail if the players were all minors and do not have the legal capacity to contract.

Tortious liabilities

Game developers also face potentially devastating civil suits when online games trigger offline, real world assaults. In the US, families of three slain police officers are suing Sony and various retailers for US$600m because the teen who committed the killings claimed he was influenced by the game *Grand Theft Auto*.[15] There are other tragedies as well; a Chinese gamer was sentenced to life imprisonment in 2005 after stabbing his friend to death for selling of if a precious virtual weapon he lent him.[16] At the present moment, it is not possible to see how victims of such crimes could or would have recourse against game developers. But would there come a time when game developers have to put "health warnings" on the games?

Jurisdictional issues

Leaving aside the points outlined above, lurking under all these issues would be jurisdictional concerns and conflicts of laws issues. What happens when the virtual dispute involves two parties in different jurisdictions in the context of a game created in a third jurisdiction? Which law would then be applied? There might be contractual provisions in the End-User License Agreements ("EULAs") dealing with the choice of law issues but, as we shall see, such terms may not always work.

EULAs and terms of service

At present, game developers largely rely on contractual limitations in their EULAs and/or terms of service ("TOS") to protect themselves. They do this by expressly claiming all IPR existing in the game, restricting users (of the game) from selling or granting a security interest in online game content.[17] Although games like *Second Life*[18] do give the gamers limited IPR in their in-game creations,[19] even *Second Life*, reserves the right to terminate the game service without any liability for potential economic loss of the gamers.[20]

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[14] As it is in Ultima Online where the express rules state that "player killing and thievery … is not considered harassment". And that "there are gamer mechanics created around these play styles … such as … the thieving skill …". See "Harrassment Policy" available on the Ultima Online website at <http://support.uo.com/harass.html> (accessed 29 July 2006).

[15] Chris Bennett, "Video Games Create a Whole New World of Legal Liabilities" (21 July 2006), available on The Lawyers Weekly website at <http://www.lawyersweekly.ca/index.php?section=article&articleid=189> (accessed 29 July 2006).

[16] See "Chinese Gamer Sentenced to Life" (8 June 2005) available on the BBC News website (International version) at <http://news.bbc.co.uk/2/hi/technology/4072704.stm> (accessed 29 July 2006).

[17] See local MMORPG El Kardian's (which claims to be Singapore's first 3-D MMORPG) "Terms of Use" which contains the following clause: "You are entitled to use El Kardian for your own personal use and shall comply with any term and/or condition of use of the Game Account and/or the El Kardian Service prescribed by paGn from time to time at any time, but you shall not be entitled to:

(i) sell or grant a security interest in or transfer reproductions of El Kardian and/or the Game Accounts to any third party in any way, nor to rent, lease, or license El Kardian and/or the Game Account to any third party without the prior written consent of paGn;

(ii) sell or grant a security interest in or El Kardian game content such as in-game character items to other parties through outside game agents without the prior written consent of paGn; …". Available on the Pacnet Asian Gaming Network (paGn) website at <http://www.elkardian.net.sg/terms_of_use.html> (accessed 29 July 2006).

[18] An online game created by Linden Lab. See the Second Life website at <http://secondlife.com> (accessed 29 July 2006).

[19] Second Life's "Terms of Service" provides, at cl 3.2, that: "You [the user] retain copyright and other intellectual property rights with respect to Content you create in Second Life, to the extent that you have such rights under applicable law …". See the Second Life website at <http://secondlife.com/corporate/tos.php> (accessed 29 July 2006).

[20] This is captured in cl 5.3 of *Second Life*'s "Terms of Service" which provides that Linden Lab "does not ensure continuous … operation of the Service …". See the *Second Life* website at <http://secondlife.com/corporate/tos.php> (accessed 29 July 2006).

The catch though is that nobody can be sure if and to what extent these contractual limitations can be enforced by the game developers. If indeed the gamers' rights in virtual property are recognised, there is a very real likelihood of courts striking down overly harsh license terms that infringe upon those rights. A further problem is that the limitations in the EULAs only apply to the users who have signed up with the service and would not have any effect on a person who is not a party to the contract.

Legislation

Specific legislation like those found in South Korea, Taiwan, Hong Kong *etc* may be promulgated to address the status of virtual property and its ramifications. However, prior to us rushing off to pass laws to address the situation, we ought to study the experiences of other countries. Any such laws ought to balance the competing interest of game developers (who would want to have maximum freedom in the design and operation of the game), users (who would like to ensure that their virtual property is protected against marauders, fraudsters and to a certain extent, the game developers themselves), and third parties (who would like to have some form of security in the event that they lend "real" money secured on the virtual property or if they had performed some service in the real world in exchange for payment in the form of virtual property). Ideally, these laws should also bring a degree of legal certainty to the virtual worlds

FUTURE SHOCK

One consideration that must not be overlooked is the fact that there is no single, accepted or acceptable way of laying out how a game universe is to be governed. Different game developers may use different techniques or ideas to govern their particular universe or virtual societies. The term used to described such a situation is "multiverse". Some virtual worlds are, as Balkin puts it, vehicles of commerce[21] that allow for and indeed encourage real world commodification of in-game assets.[22] Others are coded by game developers to try to maintain a non-commodified world and are often buttressed by explicit policies and game rules found in their EULAs and TOS. Therefore, any legislation which adopts a one-size-fits-all approach would not adequately address the unique characteristics of different virtual worlds or that fact that there exists more than one type of virtual world.

Statutes of interration

One possible model of regulation as proposed by a notable virtual world economist, Edward Castranova, is an "interration" model where governments can offer legal as well as financial incentives and protection to game developers to encourage them to "interrate".[23] These statutes of "interration" are modelled after statutes of incorporation. Game developers, would then be able to choose different types of legal regimes for their virtual worlds to operate within depending on their game's goals and design, much like how businesses now can choose between sole proprietorships, partnerships and corporations. For example, in a virtual world designed to discourage real-world commodification, gamers would not have any real-world rights in their virtual assets. In worlds that permit real-world commodification, the gamer's rights would be appropriately protected.[24] Game developers on the other hand would welcome statutory protection from liability for the acts or omissions of individual gamers. The result would be a win-win situation for the parties involved.

Further concerns

Other than the issue pertaining to the status of virtual property, other concerns loom on the horizon. Governments will have to consider

[21] Balkin, "Virtual Liberty", *supra* n 4 at 2074.

[22] Games like *There* or *Second Life* are not story- or quest-based but rather allow the gamer freedom to create and even sell their creations to other gamers. The argument is that such game models encourage commodification and should incur different legal obligations with respect to their gamers' property interests in in-game assets.

[23] See Edward Castronova, "The Right to Play" (October 2003) at p 12 available on the New York Law School website at <http://www.nyls.edu/docs/castronova.pdf> (accessed 29 July 2006).

[24] Balkin, "Virtual Liberty", *supra* n 4 at 2091.

Other than the issue pertaining to the status of virtual property, other concerns loom on the horizon. Governments will have to consider issues of privacy (considering that everything that goes on in the games is recorded or at least recordable)[25] especially as virtual worlds begin to look and operate more like virtual spaces of commerce and "non-gameplay" interaction ...

issues of privacy (considering that everything that goes on in the games is recorded or at least recordable)[25] especially as virtual worlds begin to look and operate more like virtual spaces of commerce and "non-gameplay" interaction, for example what would happen when a virtual patient sees a virtual psychiatrist in Second Life. Should any form of privacy protection be able to the virtual patient and the gamer who controls that virtual patient? Another concern would be the further extension of personal rights into the virtual world where a gamer's in-game persona acquires rights independent of the gamers. For example, would the gamer have any recourse if his in-game persona was defamed within the game? To what extent would or should the law accommodate or address such issues? Questions about the possibility of in-game personas acquiring legal personality may also arise. Finally, governments may wish to look into the viability of taxing virtual world activities that generate real world income and regulation of virtual world activities that may be considered socially detrimental. A prime illustration would be a virtual world with a casino and thereafter, gamers who wager there may take their winnings in virtual currency and convert them into real world dollars.

CONCLUSION

This is perhaps the right time to examine issues pertaining to virtual worlds. We are, as a nation, striving to be Asia's foremost Digital Hub. Given our past experience in other kinds of hub activities, a defined, rational and stable legal system to govern all aspects of activities within virtual worlds and more importantly, the interaction between the virtual and the real world would be essential.

[25] Many MMORPG's EULAs would include privacy policies that reserve for the game developers the right to record the gamers' interactions within the game and even share the information with third parties.

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LEGISLATION WATCH

By JOYCE CHNG AND EMILY TEO, LEGISLATION DIVISION, ATTORNEY-GENERAL'S CHAMBERS

[Note: A complete and detailed list of legislation may be found online at http://www.sal.org.sg/media_newsltter.htm]

Subsidiary legislation published in May and June

The **Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Amendment of Second Schedule) Order 2006** (GN No S 254/2006, wef 8 May 2006) amends the Second Schedule to the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A) to include various offences in certain other written laws as serious offences under the Act.

The **Commissioners for Oaths (Amendment) Rules 2006** (GN No S 258/2006, wef 15 May 2006) amend the Commissioners for Oaths Rules (Cap 322, R 3) to provide, among other things, that —

(a) the Senate of the Singapore Academy of Law ("the Senate") may appoint any employee from designated non-profit organisations as a commissioner for oaths;
(b) the Senate may at any time revoke the designation of any non-profit organisation; and
(c) the fee payable per annum to the Singapore Academy of Law for each appointment or reappointment of an employee of any designated non-profit organisation as a commissioner for oaths shall be $100.

The **Banking (Credit Card and Charge Card) (Amendment) Regulations 2006** (GN No S 268/2006, wef 24 May 2006) amend the Banking (Credit Card and Charge Card) Regulations 2004 (GN No S 27/2004) to provide that a supplementary credit card or charge card may be issued to a person below 18 years of age where the person requires the use of the supplementary card for the purposes of his overseas travel.

The **Public Entertainments and Meetings (Security) (Amendment) Notification 2006** (GN No S 284/2006, wef 1 June 2006) amends the Public Entertainments and Meetings (Security) Notification (Cap 257, N 1) to provide that the Licensing Officer may require a security of not less than $1,000 but not more than $5,000 per licence to be given in respect of any lecture, talk, address, debate or discussion.

The **Companies (Central Depository System) (Section 130D — Supplementary Provisions for Business Trusts) Regulations 2006** (GN No S 293/2006, wef 2 June 2006) provide that where book-entry securities relating to units in any business trust within the meaning of the Securities and Futures Act (Cap 289) are deposited with the Central Depository System ("the Depository") or its nominee —

(a) the Depository or its nominee (as the case may be) shall be deemed not to be a holder of the book-entry securities; and
(b) the persons named as the depositors in a Depository Register shall, for such period as the book-entry securities are entered against their names in the Depository Register, be deemed to be holders of the amount of the book-entry securities entered against their respective names in the Depository Register.

The **Smoking (Control of Advertisements and Sale of Tobacco) (Labelling) (Amendment) Regulations 2006** (GN No S 295/2006, wef 1 August 2006) amend the First Schedule to the Smoking (Control of Advertisements and Sale of Tobacco) (Labelling) Regulations (Cap 309, Reg 2) to provide —

(a) for new warnings to be clearly and conspicuously printed on every container of smoked tobacco products; and
(b) that any person may, until 31 October 206, import, sell or supply any smoked tobacco product that has been clearly and conspicuously printed with the existing warnings.

The **Infectious Diseases (Notification of Infectious Diseases) (Exemption) Order 2006** (GN No S 300/2006, wef 1 June 2006) provides that —

(a) section 6 of the Infectious Diseases Act (Cap 137) shall not apply to any registered medical practitioner practising in, or any employee of, any of the medical clinics set out in the Schedule therein in relation to the administration of an anonymous test on any person for Human Immunodeficiency Virus Infection (Non-Acquired Immune Deficiency Syndrome); but

(b) the registered medical practitioner or employee is not exempted from the duty under s 6 of the Infectious Diseases Act to notify the Director of Medical Services if a person on whom an anonymous test is administered is found to be suffering from, or to be a carrier of, any infectious diseases other than Human Immunodeficiency Virus Infection (Non-Acquired Immune Deficiency Syndrome).

The **Employment (Recommendations for Annual Wage Adjustment) Notification 2006** (GN No S 327/2006) sets out the National Wages Council's wage guidelines for the period 1 July 2006 to 30 June 2007 (both dates inclusive) and the recommendations, amongst other things, as follows:

(a) that built-in wage increases should continue to lag behind productivity growth in order to be sustainable and to maintain cost competitiveness;

(b) that companies should continue to implement wage restructuring, move away from seniority-based wages and introduce the Monthly Variable Component in the wage structure (for companies which have yet to do so);

(c) that companies should formulate and apply appropriate Key Performance Indicators in consultation with unions and workers, and to embark on job-based, competency-based and performance based wage systems;

(d) that companies should hire mature and older workers and retain them beyond the retirement age of 62, and to step up their training and skills upgrading of workers, particularly the older workers, low wage workers and contract workers; and

(e) that companies should continue to work actively with the National Trades Union Congress, Singapore National Employers Federation and Singapore Workforce Development Agency to achieve the target of re-creating and redesigning 10,000 jobs in 2006 to raise workers' productivity and earning capacity.

The **Payment Systems (Oversight) (Exemption) Regulations 2006** (GN No S 334/2006, wef 23 June 2006) provide that the Monetary Authority of Singapore exempts —

(a) a holder of any single purpose stored value facility from ss 30 and 31 of the Payment Systems (Oversight) Act 2006 (Act 1 of 2006); and

(b) any person in Singapore who acts on behalf of a holder of any single purpose stored value facility to offer or invite, or issue any advertisement containing any offer or invitation to, the public or any section of the public in Singapore to purchase or otherwise acquire a stored value facility or the value stored in the facility, whether in Singapore or elsewhere, from s 31(4) of the Payment Systems (Oversight) Act 2006.

The **Payment Systems (Oversight) (Designated Payment Systems) Order 2006** (GN No S 337/2006, wef 23 June 2006) sets out that the following payment systems are designated as designated payment systems for the purposes of the Payment Systems (Oversight) Act 2006 (Act 1 of 2006):

(a) Singapore Dollar Cheque Clearing System operated by Banking Computer Services Pte Ltd;

(b) Inter-bank GIRO System operated by Banking Computer Services Pte Ltd;

(c) US Dollar Cheque Clearing System operated by Banking Computer Services Pte Ltd; and

(d) MAS Electronic Payment System operated by the Monetary Authority of Singapore.

The **Smoking (Prohibition in Certain Places) (Amendment) Notification 2006** (GN No S 345/2006, wef 1 July 2006) amends the First Schedule to the Smoking (Prohibition in Certain Places) Notification (Cap 310, N 1) to provide that smoking shall not be permitted in —

(a) any foodshop, except that the Director-General of Public Health ("the Director-General") may designate for smoking, such part of the outdoor refreshment area of the foodshop not exceeding 20% of the total floor area of that outdoor refreshment area; and
(b) any hawker centre, except that the Director-General may designate for smoking —
    (i) such part of the outdoor refreshment area of the hawker centre not exceeding 20% of the total outdoor seating capacity; or
    (ii) where the hawker centre does not have an outdoor refreshment area, such part of the indoor refreshment area of the hawker centre not exceeding 10% of the total indoor seating capacity.

The **Road Traffic (Public Service Vehicles) (Vocational Licences and Conduct of Drivers, Conductors and Passengers) (Amendment) Rules 2006** (GN No S 356/2006, wef 1 July 2006) amend the Road Traffic (Public Service Vehicles) (Vocational Licences and Conduct of Drivers, Conductors and Passengers) Rules (Cap 276, R 8) to provide for —
(a) the grant of provisional licences to act as bus conductors and omnibus drivers by the Registrar of Vehicles ("the Registrar");
(b) the age limit of applicants for a licence to act as a conductor of omnibuses and school buses;
(c) the validity of licences; and
(d) the requirement for the following licensees to furnish a medical certificate to the Registrar:
    (i) taxi drivers, being the holders of valid licences, who, on or after 1 July 2006, are required to undergo, within six months before attaining 70 years of age, an assessment test to assess their fitness to drive at a clinic designated by the Registrar; and
    (ii) taxi drivers, being the holders of valid licences, who, on or after 1 July 2006, are at least 70 years but below 73 years of age and who have not furnish medical certificates to the Registrar for at least one preceding year.

The **Central Provident Fund (Medisave Account Transfers) Regulations 2006** (GN No S 359/2006, wef 1 July 2006) provide the situations in which the Central Provident Fund Board shall transfer the amount standing to the credit of a member in his medisave account which is in excess of the medisave contribution ceiling to his special account, retirement account or ordinary account, as the case may be.

The **Central Provident Fund (Prescribed Amount for Medisave Account) Regulations 2006** (GN No S 360/2006, wef 1 July 2006) provide that the prescribed amount under s 16 of the Central Provident Fund Act (Cap 36) is $28,000, except for members who are entitled to certain medical benefits.

The **Central Provident Fund (Minimum Sum Scheme Nominations) Rules 2006** (GN No S 374/2006, wef 1 July 2006) provide that where two parties to a marriage who are members of the Central Provident Fund desire to set aside jointly an amount which is less than two times the minimum sum under s 15(6A) of the Central Provident Fund Act (Cap 36), each party shall nominate the other party to receive, on his death, the amount of the minimum sum belonging to him.

The **Central Provident Fund (Prescribed Amount for Special Account) Notification 2006** (GN No S 377/2006, wef 1 July 2006) provides that the prescribed amount for the purposes of s 18B of the Central Provident Fund Act (Cap 36) is $94,600.

The Minister for the Environment and Water Resources has, *vide* the **Notification relating to Assignment of Other Functions to Public Utilities Board** (GN No S 388/2006), assigned to the Public Utilities Board ("the Board") the additional functions of —
(a) regulating vessel and other activities in reservoirs maintained by the Board;
(b) managing any barrage and boat transfer facility in the reservoirs; and
(c) acting as an agent of the Government in the construction of —

(i) public sewerage systems;
(ii) public sewers; and
(iii) storm water drainage systems, drains and drainage reserves belonging to the Government.

The **Public Transport Council (Bus Service Operator's Licence) Regulations 2006** (GN No S 396/2006, wef 1 July 2006) provide, amongst other things —

(a) that an application to the Public Transport Council ("the Council") for the grant or renewal of a bus service operator's licence ("the licence") shall be accompanied by a non-refundable fee;
(b) for the duration and periodic fee of the licence;
(c) that the Council may waive or refund the whole or any part of the fees payable; and
(d) that, for the purposes of s 26A of the Public Transport Council Act (Cap 259B), where any fee, contribution, financial penalty or other sum payable under Pt IVA of the Act remains due and unpaid by a licensee, interest at an annual rate of 2% above the average of the prevailing annual prime lending rate of such bank in Singapore as the Council may determine shall be levied from the date the payment is due up to and including the date the payment is made.

The **Public Transport Council (Ticket Payment Service Licence) Regulations 2006** (GN No S 397/2006, wef 1 July 2006) provide, amongst other things —

(a) that an application to the Public Transport Council ("the Council") for the grant or renewal of a ticket payment service licence ("the licence") shall be accompanied by a non-refundable fee;
(b) for the duration and periodic fee of the licence; and
(c) that, for the purposes of s 26A of the Public Transport Council Act (Cap 259B), where any fee, contribution, financial penalty or other sum payable under Pt IVB of the Act remains due and unpaid by a licensee, interest at an annual rate of 2% above the average of the prevailing annual prime lending rate of such bank in Singapore as the Council may determine shall be levied from the date the payment is due up to and including the date the payment is made.

The **Public Transport Council (Ticket Payment Service Licence) (Exemption) Order 2006** (GN No S 400/2006, wef 1 July 2006) provides that any ticket payment service provider (not being an entity that has been formed as a result of a consolidation) who has not been issued a ticket payment service licence shall be exempted from Pt IVB of the Public Transport Council Act (Cap 259B) if the total value of ticket transactions cleared by him at any time during the period of assessment does not exceed $300m.

Acts brought into operation in May and June

1. **Electricity (Amendment) Act 2006** (Act 18 of 2006) (wef 1 May 2006 *vide* GN No S 238/2006)
2. **Enlistment (Amendment) Act 2006** (Act 14 of 2006) (wef 8 May 2006 *vide* GN No S 253/2006 except ss 3 and 4(*a*))
3. **Casino Control Act 2006** (Act 10 of 2006) (Section 2 wef 1 June 2006 *vide* GN No S 278/2006)
4. **Payment Systems (Oversight) Act 2006** (Act 1 of 2006) (wef 23 June 2006 *vide* GN No S 329/2006)

Revision of Subsidiary Legislation

The Law Revision Commissioners have published, in loose-leaf form, the 2006 Revised Edition of Subsidiary Legislation made under the following Acts (wef 5 June 2006 *vide* GN No S 288/2006), incorporating all the amendments up to 1 May 2006:

(1) Bankruptcy Act (Cap 20): Bankruptcy Rules (R 1) (S 269/95)
(2) Companies Act (Cap 50): Companies (Winding Up) Rules (R 1) (S 184/69)
(3) Women's Charter (Cap 353): Women's Charter (Matrimonial Proceedings) Rules (R 4) (S 854/2005)

INVITATION TO APPLY FOR APPOINTMENT AS SENIOR COUNSEL

The Selection Committee for the Appointment of Senior Counsel invites applications for appointment as Senior Counsel.

Applicants should possess a minimum of ten years' experience as advocates and solicitors or as legal officers, and have active practices involving substantial advocacy and other litigation-related work. Pursuant to s 30 of the Legal Profession Act (Cap 161), appointees are chosen by a Selection Committee comprising the Chief Justice, the Attorney-General and the Judge of Appeal. The names of all successful candidates will be announced by the Chief Justice at the Opening of the Legal Year 2007.

Further information is furnished in the guidance note which accompanies each application form. Copies of the *Application for Appointment as Senior Counsel 2007* may be obtained from:

Singapore Academy of Law
1 Supreme Court Lane
Level 4
Singapore 178879
Tel: 6332 4006
Attn: Ms Foo Kim Leng
E-mail: foo_kim_leng@sal.org.sg

Applications close on **29 September 2006.**

LEGAL EDUCATION AND TRAINING CALENDAR FROM SEPTEMBER 2006 TO OCTOBER 2006

DATE	EVENT	SPEAKERS/TRAINERS	ORGANISERS
8 Sep (Fri) Session 1: 9.00am – 12.00pm Session 2: 2.00pm – 5.00pm	EFS Phase 4B (Filing to Family Courts) (Auto-generation of Court Doc)	CrimsonLogic	LTC
11 Sep (Mon) 9.00am – 5.00pm 11.30am – 2.30pm	MS Word for Legal Professionals	CrimsonLogic	LTC
12 – 14 Sep (Tue – Thur) 9.00am – 5.00pm	EFS Front-End Web Based Full Course	CrimsonLogic	LTC
13 – 15 Sep (Wed – Fri) 9.00am – 5.00pm	PCDT-ICDL Certification in Database (Using MS Access)	NTUC Learning Hub	LTC*
14 Sep (Thu) 1.30pm – 5.30pm	STARS eLodgment	BiziBody	LTC
15 Sep (Fri) Session 1: 9.30am – 12.30pm Session 2: 2.30pm – 5.30pm	EFS ROC Changes Phase 2	CrimsonLogic	LTC

DATE	EVENT	SPEAKERS/TRAINERS	ORGANISERS
18 – 20 Sep (Mon – Wed) 9.00am – 5.00pm	Microsoft Office Specialist Certification – Powerpoint XP	NTUC Learning Hub	LTC*
21 Sep (Thu) 9.00am – 5.00pm	LawNet Conveyancing: Intereq & STARS eLodgment	BiziBody	LTC
22 Sep (Fri) Session 1: 9.00am – 12.00pm Session 2: 2.00pm – 5.00pm	EFS ROC Changes	CrimsonLogic	LTC
25 Sep (Mon) 9.30am – 5.30pm	LawNet Services at a Glance	CrimsonLogic	LTC
26 – 28 Sep (Tue – Thu) 9.00am – 5.00pm	Microsoft Office Specialist Certification – Access XP	NTUC Learning Hub	LTC*
28 Sep (Thu) 9.00am – 5.00pm	EFS ROC Changes Phase 1 & 2	CrimsonLogic	LTC
28 Sep (Thu) 10.00am – 12.00pm	Copyright, Commerce and Society in a Digital Age	Professor Raymond T Nimmer University of Houston	SAL & Singapore Management University (SMU)
29 Sep (Fri) 9.00am – 5.00pm	Journal of Contract Law Conference 2006 – "Contract and the Commercialisation of Intellectual Property"	[please refer to pp 18-19 of this issue for more details]	SAL & Singapore Management University (SMU)
13 Oct (Fri) 2.30pm – 5.30pm	Corporate Governance	Professor Ross Grantham University of Queensland	SAL

* Partnership Program with NTUC Learning Hub.

For SAL events: Please note that all information is correct at the time of printing. While every effort is made to retain the original arrangements, changes may sometimes be necessary. An updated version of this calendar is available at the following web-site: http://www.sal.org.sg/events_calendar.htm

For enquiries and more information, please contact the respective organisers:
- LawNet Training Centre (LTC): Ms Helen Leong at 6332 4256 or Ms Aida Bte Abdul Rahman at 6332 4382 or e-mail ltc@sal.org.sg.
- Singapore Academy of Law (SAL): Ms Serene Ong at tel: 6332 4032 or les@sal.org.sg.
- Singapore Mediation Cente (SMC): Ms Survinder Kaur at tel: (65) 6332 4213 or survinder_kaur@sal.org.sg.

FOR THE RECORD

13 September 2006	**Wednesday**	**SAL Movie Night – "You, Me and Dupree".**
28 September 2006	**Thursday**	**"Oysters Take Centrestage" at Conrad Centennial Singapore Cost of workshop: $55 per person (Retail price: $100) Price includes a cooking workshop, welcome drinks, a sampling of dishes, as well as a buffet dinner voucher at Oscar's Café & Terrace.**
13 October 2006	**Friday**	**Law-Media Debate: The Rematch.**

***Please note that SAL reserves the right to make any amendments to the calendar if warranted by circumstances beyond its control.**
For inquiries on events, please contact Sherina Chan, tel: 6332 0078 or e-mail sherina_chan@sal.org.sg

WORKING CAPITAL

FUNDAMENTALLY HAPPY

Fundamentally Happy, the latest play directed by Alvin Tan and written by Haresh Sharma takes an unflinching look at the personal and emotional issues surrounding paedophilia. The Necessary Stage is offering SAL members a 20% discount on the ticket price of $28 (excluding $1.00 booking fee) between 20 September and 1 October 2006. Tickets can be obtained at www.gatecrash.com.sg, Singpost outlets or SAM kiosks. For further information, please visit www.necessary.org.

PAMPER YOUR SENSES AT SPABOUTIQUE

Enjoy the relaxing pleasures of a day-spa in the calm, intimate setting of a tropical village set in the middle of lush greenery. From now until 30 September 2006, SAL members can enjoy a 90-minute massage for just $130 (UP: $175) at Spaboutique, 6 Nassim Road, Singapore 258373. Tel: 6887 0760.

SINGAPORE WEEKEND GETAWAY

From now until 30 September 2006, enjoy the Grand Plaza Parkroyal Singapore weekend getaway at just $145+++ per night or $260+++ for two consecutive nights. Rate is inclusive of two American Buffet Breakfasts, late check out at 3pm and 10% discount on à la carte treatments at St Gregory spa. Grand Plaza Parkroyal Singapore, 10 Coleman Street, Singapore 179809. Tel: 6432 5559/60/61. E-mail: resv@gpp.sin.parkroyalhotels.com

Terms & Conditions:

- Valid on Fridays and Saturdays only.
- Rooms subject to availability.
- Not valid for the weekends of 15 and 16 September, and 22 and 23 September 2006.

THE PERFECT COIF AWAITS YOU …

Hollywood Secrets is offering SAL members an "unlimited hair package" for $198 (UP: $450). In a single visit, SAL members can pamper themselves with various combinations of the following hair services*: Hair Consultation, Wash, Root Retouch, Japanese Curls, Treatment, Highlights, Protein Treatment, Hair Cut, Colour, Perm, Cermic Curls, Rebonding, Scalp Treatment.

Terms and Conditions:

- Offer is valid until 30 September 2006.
- *The following hair services are not to be combined: Highlights, Rebonding, Ceramic Curls and Japanese Curls

Hollywood Secrets, International Building #01-09/10, 360 Orchard Road, Singapore 238869. Tel: 6735 3375.
Hollywood Secrets, Scotts Shopping Centre, #03-19/22, 6 Scotts Road, Singapore 228209. Tel: 6736 3940.
Hollywood Secrets, Far East Plaza, #03-133, 14 Scotts Road, Singapore 228213. Tel: 6734 4688.

SWIRL AT PAN PACIFIC SINGAPORE

SWIRL is a members-only wine club that takes wine appreciation to a new level of chic. Members will receive six specially-selected bottles of wine monthly, based on the grape varietal theme of the month. These bottles of wine can be stored in the Wine Vault (each member's wine cellar capacity is up to eight bottles at a time) to be slowly appreciated or paired with dinner at the hotel's restaurants (corkage is waived). Exclusively for SAL members, membership is at $328 per month (UP:$388). For enquiries, please call 6826 8297 or e-mail rbennett@panpacific.com.

COMPLIMENTARY SHOPPING VOUCHER

Present your SAL membership card at Karen Millen or Maxstudio.Com between now and 31 August 2006 and receive a shopping voucher worth $50!

Terms and conditions:

- Voucher is only valid with a minimum $300 nett purchase of regular-priced items.
- Voucher is valid until 15 September 2006.
- This offer is not to be used with other discounts or privileges.
- Only original vouchers will be accepted.

Maxstudio.Com, 435 Orchard Rd, #02-09/10 Wisma Atria, Singapore 238877. Tel/Fax: 6235 5963.
Maxstudio.Com, 290 Orchard Road, #02-36 Paragon, Singapore 238859. Tel: 6732 0596.
Karen Millen, 435 Orchard Rd, #02-25/26/27 Wisma Atria, Singapore 238877. Tel/Fax: 6333 6870.