Published on 25 February 2026

A PRIMER ON *STARE DECISIS* AND THE APPLICATION OF ENGLISH LAW ACT 1993 IN SINGAPORE

[2026] SAL Prac 6

In Singapore today, there are two main reasons by which a court may be considered bound to apply a particular legal rule stated in a precedent case: (a) through the force of *stare decisis*, or (b) by operation of the Application of English Law Act 1993 (2020 Rev Ed) ("AELA"). This article aims to offer practitioners an updated primer on the doctrine of *stare decisis* and the operation of AELA in Singapore. It purports to be a practical starting point on the issues and focuses on synthesising and describing the relevant positions that have been taken by Singapore courts on the issues.

Benny **TAN** Zhi Peng
LLB (Hons) (National University of Singapore),
MPhil in Criminological Research (Cambridge);
Advocate and Solicitor (Singapore);
Assistant Professor, Faculty of Law, National University of Singapore.

JIN Yilei
LLB (First Class Honours) (National University of Singapore).

Wiesiek **KHOO**
LLB (First Class Honours) (National University of Singapore).

I. Introduction

1 In Singapore today, there are two main reasons by which a court may be considered bound (as in legally obliged or compelled) to apply a particular legal rule stated in a precedent case: (a) through the force of *stare decisis*, or (b) by operation of the Application of English Law Act 1993[1] ("AELA").

1 2020 Rev Ed.

2 The most recent piece that comprehensively discussed *stare decisis* in Singapore was written by Walter Woon more than 25 years ago.[2] There have been multiple pieces written about the AELA, including one by Walter Woon at the same time as the abovementioned piece,[3] and the most recent one written ten years ago by former Chief Justice of Singapore Chan Sek Keong.[4]

3 This short note aims to offer practitioners an updated primer on the doctrine of *stare decisis* and the operation of AELA in Singapore. It only purports to be a *practical starting point* on the issues and not an exhaustive academic discourse on all the nuances and technicalities. It focuses on synthesising and describing the relevant positions that have been taken by Singapore courts on the issues. There are various other specific issues that await judicial clarification.

II. *Stare decisis*

4 At the outset, it is worth underscoring that *stare decisis* only operates to bind a Singapore court to apply the *ratio decidendi* expressed in another case if that case cannot be distinguished from the present case.[5] Put another way, a Singapore court is not bound to apply, by *stare decisis*, anything which is merely *obiter dicta* from another case; A Singapore court is also not obliged to apply the *ratio* from another case if the context of that other case is materially different from that of the present case. To be sure, while *dicta* is never binding on a court, it may be persuasive (or even highly persuasive). The Singapore High Court case of

2 Walter Woon, "The Doctrine of Judicial Precedent" in *The Singapore Legal System* (Kelvin Y L Tan ed) (Singapore University Press, 2nd Ed, 1999) at p 297.

3 Walter Woon, "The Applicability of English Law in Singapore" in *The Singapore Legal System* (Kelvin Y L Tan ed) (Singapore University Press, 2nd Ed, 1999) at p 230.

4 Chan Sek Keong, "Application of English Law Act 1993 – A New Charter of Justice" in *Singapore Law: 50 Years in the Making* (Goh Yihan & Paul Tan eds) (Academy Publishing, 2015) at p 26.

5 Walter Woon, "The Doctrine of Judicial Precedent" in *The Singapore Legal System* (Kelvin Y L Tan ed) (Singapore University Press, 2nd Ed, 1999) at p 298.

Ong Ming Johnson v Attorney-General[6] has some useful guidance on how to ascertain whether a legal rule in a case is *ratio* or *dicta*.[7]

5 In the rest of this piece, when it is stated that a court is bound by *stare decisis* to apply a legal rule held in a precedent case, it is assumed that the legal rule is part of the *ratio* of the precedent case, and that that precedent case cannot be distinguished from the present case.

A. General rules

6 There are two types of *stare decisis*: vertical and horizontal. It is trite that vertical *stare decisis* applies in Singapore. This means that a court lower in the judicial hierarchy in Singapore is bound to apply a legal rule held by a court higher up in that hierarchy, even if that rule was given *per incuriam*.[8] As a result, a legal rule expressed by the Court of Appeal of Singapore is binding on lower courts such as the Singapore High Court, District Court, and the Magistrates' Court; a legal rule expressed by the Singapore High Court is binding on the courts lower in the hierarchy such as the District Court and the Magistrates' Court. In this particular context, the District Court is not a "higher-level" court than the Magistrates' Court (the District Court does not hear appeals from the Magistrates' Court; the two courts simply differ in terms of jurisdiction and powers).[9]

7 In contrast, horizontal *stare decisis* does not apply in Singapore.[10] The legal rule stated by a court in a case is not binding on the same court or courts of co-ordinate jurisdiction. For instance, the legal rule expressed in a District Court case is not binding on the District Court (or the Magistrates' Court) when

6 [2020] SGHC 63.
7 *Ong Ming Johnson v Attorney-General* [2020] SGHC 63 at [299]–[305].
8 *Ong Ming Johnson v Attorney-General* [2020] SGHC 63 at [307]–[314]; *Attorney-General v Au Wai Pang* [2015] 2 SLR 352 at [18].
9 See ss 19–20 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) and Pt 4 of the State Courts Act 1970 (2020 Rev Ed).
10 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] SGHC 165 at [44], citing *Attorney-General v Shadrake Alan* [2011] 2 SLR 445 at [4] and *Wong Hong Toy v Public Prosecutor* [1985–1986] SLR(R) 656 at [11]. See also *Chew Eng Han v Public Prosecutor* [2017] 2 SLR 1130 at [49].

it hears a later case. That said, the legal rule stated by a court in a case may still be persuasive (or even highly persuasive) to the same court or courts of co-ordinate jurisdiction.

B. Court of Appeal of Singapore and the 1994 Practice Statement on Judicial Precedent

8 The Court of Appeal of Singapore issued a Practice Statement on Judicial Precedent on 11 July 1994. At its core, this Practice Statement declares that the Court of Appeal is not bound by any of its own decisions or a decision from the UK Privy Council. While the Court of Appeal will normally follow such prior decisions, it may depart from them where "adherence to such prior decisions would cause injustice in a particular case or constrain the development of the law in conformity with the circumstances of Singapore".[11] The Court of Appeal has recently reaffirmed the applicability of this Practice Statement.[12] As an aside, the statement caveats that it is not intended to affect the use of precedent in the High Court or any other lower courts.

9 Consequently, in Singapore today, the Court of Appeal is in effect never strictly bound, by *stare decisis*, to apply any past cases.[13]

C. Special case – UK Privy Council

10 The UK Privy Council used to hear appeals from Singapore up until 8 April 1994, when such an avenue of appeal was abolished.[14] The Privy Council also hears, or has heard, appeals from various other common law jurisdictions.[15]

---

11 *Practice Statement (Judicial Precedent)* [1994] 2 SLR 689.

12 See *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284 at [100]; *The Royal Bank of Scotland NV v TT International Ltd* [2015] 5 SLR 1104 at [192]; and *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [61].

13 *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [122]. For a list of example cases where the Court of Appeal has departed from its previous decisions, see the same case at [123].

14 See Singapore Parl Debates; Vol 62, Sitting No 6; [23 February 1994] (Prof S Jayakumar, Minister for Law).

15 See "Judicial Committee of the Privy Council" at <https://jcpc.uk/> (accessed 1 February 2026).

11 During the time when the Privy Council heard appeals from Singapore, it functioned as the apex court of appeal in the hierarchy of Singapore's judicial system. Therefore, a legal rule held in a Privy Council case *when it was hearing an appeal from Singapore* is binding, by virtue of vertical *stare decisis*, on the Singapore High Court and other lower courts in Singapore.[16]

12 On the other hand, Privy Council cases where the Privy Council was *hearing an appeal from other common law jurisdictions* is not binding on any court in Singapore, though such a case may be persuasive or highly persuasive to a Singapore court if it is compelling, principled and in conformity with the circumstances of Singapore.[17]

13 The most recent authoritative exposition on the bindingness of Privy Council cases on Singapore court may be found in the 2018 Court of Appeal (five judges coram) case of *Public Prosecutor v Lam Leng Hung*.[18] The court stated the general principle as such: A decision should only be binding if it was made by a court or tribunal higher in the hierarchy of the same juristic system as the court considering the issue.[19]

D. Special case – Federal Court of Malaysia

14 The Federal Court of Malaysia heard appeals from Singapore during two periods of time. The first period was from 16 September 1963 to 8 August 1965. During this period, Singapore was part of Malaysia, and the Federal Court of Malaysia functioned as the apex court of appeal for cases in Singapore and 13 other states. Thus, the legal rules held in cases decided by the Federal Court of Malaysia hearing an appeal from Singapore during these short two years are binding, by virtue of vertical *stare decisis*, on the Singapore High Court and the other lower courts. This was affirmed by the Court of Appeal in the 1987 case of *Ng Sui Nam v Butterworth & Co (Publishers)*

16 *Mah Kah Yew v Public Prosecutor* [1968–1970] SLR(R) 851 and *Practice Statement (Judicial Precedent)* [1994] 2 SLR 689.
17 *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [66].
18 [2018] 1 SLR 659.
19 *Public Prosecutor v Lam Leng Hung* [2018] 1 SLR 659 at [61]–[66].

Ltd.[20] Because Singapore was not an independent state during this period but was part of Malaysia with 13 other states, it is arguable that decisions by the Federal Court of Malaysia hearing appeals from any of these other states during this specific period are also binding on those Singapore courts in the same way.

15 The second period was from 9 August 1965 to 8 January 1970. Although Singapore was already an independent state during that period, the Federal Court of Malaysia continued to hear appeals from Singapore, and accordingly functioned as the apex appellate court of Singapore, during those few years. Therefore, the legal rules held in cases decided by the Federal Court of Malaysia hearing an appeal from Singapore during those few years are binding, by virtue of vertical *stare decisis*, on the Singapore High Court and the other lower courts. This has been affirmed recently by the Singapore Court of Appeal in *Freight Connect (S) Pte Ltd v Paragon Shipping Pte Ltd*.[21]

E. Special case – Singapore High Court (Appellate Division)

16 Since 2 January 2021, the Singapore High Court was restructured into the General Division ("General Division") as well as the Appellate Division.[22] In civil cases, an appeal of a decision rendered by the General Division of the High Court may be heard either by the Appellate Division of the High Court ("Appellate Division"), or the Court of Appeal of Singapore (or both), depending on the nature of the case. The Appellate Division does not hear any appeal in criminal cases, and thus far, it has sat with a Bench of three judges.

20 [1987] SLR(R) 171 at [50].
21 [2015] 5 SLR 178 at [53]–[54]. See also *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2016] 2 SLR 366 at [46].
22 See Pts 3 and 4 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed).

17 It has recently been clarified that:[23]

(a) The Appellate Division is bound by legal rules stated in the Singapore Court of Appeal cases (by virtue of vertical *stare decisis*).

(b) The Appellate Division is not bound by its own decision (reinforcing that horizontal *stare decisis* does not apply in Singapore).

(c) Legal rules stated in Appellate Division cases are binding on the General Division and the other lower courts.

18 There has not been judicial consideration on whether the Appellate Division is bound by legal rules held in cases decided by the UK Privy Council or the Federal Court of Malaysia, in the manner described above.[24] The authors submit that the Appellate Division should be so bound for the following reasons:

(a) The Appellate Division remains part of the Singapore High Court (though higher in hierarchy than the General Division).

(b) There is so far no equivalent of the 1994 Practice Statement on Judicial Precedent that applies to the Appellate Division.[25]

(c) A decision rendered by the Appellate Division may be appealed to the Court of Appeal with leave of the latter court.[26] Hence, in a case where the Appellate Division is bound to apply a legal rule held by the UK Privy Council or the Federal Court of Malaysia, the Court of Appeal generally still has the opportunity to decide that it is not appropriate to apply that particular legal rule in Singapore.

---

23 See *Noor Azlin v Changi General Hospital Pte Ltd* [2021] 2 SLR 440 at [80]; *Pradeepto Jumar Biswar v Gouri Mukherjee* [2022] 2 SLR 1347 at [54]; *Seow Fook Sen Aloysius v Rajah & Tann Singapore LLP* [2022] 2 SLR 1091 at [11]; and *UJM v UJL* [2022] 1 SLR 967 at [115].

24 See paras 10–15 above.

25 See paras 8–9 above.

26 Save the very narrow categories of cases specified in the Ninth Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed).

F. Special case – Singapore High Court (Registrar)

19 The Supreme Court of Singapore also comprises a Registry. Registrars from the Registry ("High Court (Registrar)") are empowered to exercise some powers of a judge sitting in chambers in the General Division.[27] In civil matters, the Singapore High Court (Registrar) hears, among other things, various interlocutory applications and trials on assessment of damages and taking of accounts. In criminal cases, the High Court (Registrar) presides over various pre-trial matters.

20 In the 2016 civil case of *Chan Yat Chun v Sng Jin Chye*,[28] the High Court (Registrar) preferred the view that it rests on the same level of hierarchy as the Singapore High Court (now the General Division). Given that horizontal *stare decisis* does not apply in Singapore, the High Court (Registrar) therefore opined that it was not bound by a legal rule held by the Singapore High Court (now the General Division).

21 The High Court (Registrar) in three subsequent cases – *Actis Excalibur Ltd v KS Distribution Pte Ltd*,[29] *Peter Low LLC v Higgins, Danial Patrick*,[30] and *Vigar, Andrew v XL Insurance Company Se Singapore Branch*[31] adopted an opposite stance. In the first two cases (decided before 2021), the High Court (Registrar) stated that it was bound by decisions from the Singapore High Court, and in the third case (decided after 2021), it stated that it was bound by decisions from the General Division. In particular, in these three cases, the view was taken that the Singapore High Court (now the General Division) was above the High Court (Registrar) in the judicial hierarchy in Singapore. This was because decisions from the High Court (Registrar) are appealable to the Singapore High Court (now the General Division) as of right, and the Registrar is exercising powers, authority and

27 See SG Courts, "Role and Structure of the Supreme Court" <https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court/structure#registry> (accessed 1 February 2026).
28 [2016] SGHCR 4.
29 [2016] SGHCR 11.
30 [2017] SGHCR 18.
31 [2025] SGHCR 12.

jurisdiction delegated by High Court judges for administrative convenience. Vertical *stare decisis* thus operates to bind the High Court (Registrar) to legal rules expressed by the Singapore High Court (now the General Division).

22 Although the weight of authorities is currently in favour of the latter stance, there has yet to be a decisive determination of this issue by one of the higher courts in Singapore.

G. Singapore Court of Appeal and Singapore High Court sitting with more than the usual number of judges

23 The Singapore Court of Appeal typically sits with three judges on the Bench. There have been cases where five judges have been empanelled to hear a Court of Appeal case. The General Division usually sits with one judge on the Bench. There have been cases where it has sat with three judges on the Bench.

24 The General Division sitting with three judges in the recent criminal appeal in *Naresh Kumar s/o Nagesvaran v Public Prosecutor*[32] clarified that:[33]

> (a) a three-judge court of the General Division may be described as a *de facto* (but not *de jure*) Court of Appeal,[34] and this is especially so in a case of such a three-judge court comprising two or even three Justices of the Court of Appeal, but
>
> (b) even though such a three-judge court's decision may be accorded the same respect as a Court of Appeal decision, in the judicial hierarchy in Singapore, such a court is not the Court of Appeal, and it would still be bound by decisions of the Court of Appeal.

25 The court also stated that it is not bound by an earlier decision by the General Division.[35]

32 [2025] 4 SLR 1068.
33 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] 4 SLR 1068 at [45].
34 *Chew Eng Han v Public Prosecutor* [2017] 2 SLR 1130 at [49].
35 *Naresh Kumar s/o Nagesvaran v Public Prosecutor* [2025] SGHC 165 at [44].

26 The authors suggest, by extension of logic, that:

(a) a single judge sitting in the General Division is not bound by a decision rendered by three judges sitting in the General Division; but the latter decision should *prima facie* be very persuasive to the former,[36] and

(b) the Court of Appeal sitting with the usual three judges is not bound by a decision rendered by five judges sitting in the Court of Appeal, but the latter decision should *prima facie* be very persuasive to the former (and should not be departed from unless adherence to the latter decision would cause injustice in the present case or constrain the development of the law in conformity with the circumstances of Singapore).[37]

H. When there is a clash of equally binding authorities

27 The Malaysian courts have held that where a lower court is faced with a clash of equally binding authorities, it may elect between either of them.[38] There does not appear to be a Singapore case that has authoritatively addressed this point.[39]

I. Stare decisis and statutory interpretation

28 How does *stare decisis* apply in the context of an issue of statutory interpretation?[40] In the 1994 case of *Chen Hsin Hsiong v Guardian Royal Exchange Assurance plc*,[41] the Singapore High Court suggested that if there is a precedent case which dealt with the same issue of statutory interpretation and the court offered an interpretation as part of its *ratio*, then a lower court

36 See *TUC v TUD* [2017] 4 SLR 1360 at [12].
37 See paras 8–9 above.
38 See *Public Prosecutor v Joseph Chin Saiko* [1972] 2 MLJ 129; *Usman bin Ahmad v Chin Brothers Construction Co* [2001] 1 MLJ 281; and *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1.
39 But see the Singapore Magistrates' Court case of *Public Prosecutor v Ng Wei Long* [2019] SGMC 78 at [14] and *Lim Quee Choo v David Rasif* [2008] SGHC 36 at [59].
40 See also Lisa Crawford & Dan Meagher, "Statutory Precedents Under the 'Modern Approach' to Statutory Interpretation" (2020) 42(2) *Sydney Law Review* 209.
41 [1994] 1 SLR(R) 591 at [14].

dealing with the same issue subsequently is bound (by reason of vertical *stare decisis*) to apply the interpretation from the earlier case. The Singapore High Court (three judges coram) in the 2017 case of *Public Prosecutor v Lam Leng Hung*[42] seems to have taken a similar view.[43]

29 Be that as it may, statutory interpretation in Singapore has evolved somewhat over the past 30 years.[44] What if an earlier case has offered an interpretation of a statutory provision as part of its *ratio*, but that interpretation was based on an outdated approach to statutory interpretation in Singapore? Is a lower court today still bound by that interpretation? Can the earlier case be said to be distinguishable and therefore not binding? This issue may benefit from future judicial clarification.

III. Application of English Law Act 1993 (and Second Charter of Justice and the now-repealed section 5 of Civil Law Act)

30 The Singapore courts may be bound to apply an English common law rule because it has been received as part of Singapore law by virtue of s 3 of the AELA. That provision states that:

> (1) The common law of England (including the principles and rules of equity), so far as it was part of the law of Singapore immediately before 12 November 1993, continues to be part of the law of Singapore.
>
> (2) The common law continues to be in force in Singapore, as provided in subsection (1), so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.

42 [2017] 4 SLR 474

43 *Public Prosecutor v Lam Leng Hung* [2017] 4 SLR 474 at [52], [94], [111] and [122].

44 See Benny Tan Zhi Peng, "Statutory Interpretation in Singapore in *Comparative Statutory Interpretation: An Introduction* (Janina Boughey, Lisa Crawford & Oren Tamir eds) (forthcoming, 2026); Benny Tan Zhi Peng, "Statutory Interpretation in Singapore – Another 10 Years on: A Synthesis of Current Law and Review of Developments" (2021) 33 SAcLJ 986; and Goh Yihan, "Statutory Interpretation in Singapore: 15 Years on from Legislative Reform" (2009) 21 SAcLJ 97.

31 To fully appreciate the intricacies of s 3, it is necessary to have a deep understanding of the history of the reception of English law in Singapore (and more generally, of Singapore). This topic, which is colourful but highly complex, has been extensively canvassed in detail elsewhere.[45] For present purposes, it suffices to state the gist. There are two main ways through which an English legal rule may be received as part of Singapore law.

(a) When Singapore was first founded by Sir Stamford Raffles in 1819, it was unclear what law applied or what the legal system was in Singapore. The Crown granted the Second Charter of Justice which was dated 27 November 1826. Although the Charter only purported to create a court system in Singapore, it was later interpreted as necessarily introducing English law into Singapore. The body of English law as it stood on 27 November 1826 was received into Singapore's body of law, but any such law may be modified to suit the local circumstances in Singapore.

(b) Section 5 of the Civil Law Ordinance 1878[46] was enacted in 1878 and amended in 1979. The general rule was that: When there is an issue to be decided in Singapore with respect to certain areas of law (generally relating to mercantile law), the law to be applied in Singapore would be the law that would be applied in England at the same time if such an issue arose in England. Section 5 of the Civil Law Act[47] was repealed on 12 November 1993.

32 It is suggested that when one has to decide whether a particular English rule has been received as part of Singapore law,[48] the first thing to check is whether there is a Singapore case

45 See, *eg*, Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Singapore Academy of Law, 2006); Chan Sek Keong, "Application of English Law Act 1993 – A New Charter of Justice" in *Singapore Law: 50 Years in the Making* (Goh Yihan & Paul Tan eds) (Academy Publishing, 2015) at p 26; and Andrew Phang, Goh Yihan & Jerrold Soh, "The Development of Singapore Law: A Bicentennial Retrospective" (2020) 32 SAcLJ 804.

46 Ord IV of 1878.

47 Cap 43, 1988 Rev Ed.

48 The following suggested framework also finds support in the case of *Re Will of Loke Soh Lui* [1997] 3 SLR(R) 956 at [40]–[52].

in which the court has already accepted or applied that rule. If the answer is "yes", then that rule is already part of Singapore law, and the Second Charter of Justice, s 5 of the Civil Law Act, and s 3 of the AELA would be inconsequential.[49]

33 What if the answer to the first question is "no"? There are two principles which may be relatively clearly articulated and which have been affirmed by the Singapore courts.

34 Firstly, if it can be shown that *the English rule existed as at 27 November 1826*, then that rule would have been received as part of Singapore law by virtue of the Second Charter of Justice, and s 3(1) of the AELA affirms that that rule continues to be part of Singapore law. Nevertheless, s 3(2) of the AELA prescribes that the Singapore court is not strictly bound to apply the rule if that rule no longer suits the circumstances of Singapore.[50] Two cases which had accepted English rules as part of Singapore law through this route are *Joseph Matthew v Singh Chiranjeev*[51] (accepting the doctrine of part performance) and *Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib*[52] (accepting the institution of joint tenancy).[53]

35 Secondly, if *the English rule was first formulated on or after 12 November 1993*, it could not have been received as part of Singapore law either by the Second Charter of Justice or s 5 of the Civil Law Act, and could not continue to apply through s 3(1) of the AELA. Whether a Singapore court should accept that English rule as part of Singapore law would be based on the same assessment as if the rule hailed from any other jurisdiction (broadly, whether the rule suits the circumstances of Singapore).

---

49 See *Law Society of Singapore v Ravi S/O Madasamy* [2012] SGDT 12 at [10]–[14].
50 *Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib* [2010] 2 SLR 1123 at [39].
51 [2010] 1 SLR 338 at [51]–[52].
52 [2010] 2 SLR 1123 at [19]–[20] and [39].
53 See also *Saleha Bibi v Abdul Gani* [1995] 1 SLR(R) 304 at [19] (accepting the tort of trespass); *ARW v Comptroller of Income Tax* [2019] 1 SLR 499 at [18] (accepting the Attorney-General's role as the guardian of public interest); and *Re Will of Loke Soh Lui* [1997] 3 SLR(R) 956 at [40]–[52] (accepting the doctrine of lapse).

This has been expressly affirmed by the Court of Appeal in *Review Publishing Co Ltd v Lee Hsien Loong*.[54]

36 The position for *English rules introduced after 27 November 1826 but before 12 November 1993* is less straightforward. The authors submit that for such rules, in most (if not all) cases today, it is generally not worth all the effort trying to analyse whether such a rule has been received as Singapore law through s 3(1) of the AELA. Such an exercise would necessarily require one to assess whether the rule may be considered received through the Second Charter of Justice or s 5 of the Civil Law Act, an exercise which would not only likely involve considering and untangling some exceedingly difficult issues,[55] but it is also arguably against the Legislative's and the courts' intention for one to still engage in such a complicated exercise today.[56]

37 Equally importantly, even if one engages in such an exercise and is able to conclude that such a rule has been so received, it leads merely to a starting point that the court should apply that rule. This is because s 3(2) of the AELA explicates that a court is still not bound to apply that rule if it does not suit the circumstances of Singapore. Moreover, it is unknown how strong that presumption even is (and all the more so for older English rules). So much time and effort is needed in the exercise, potentially only to arrive at a feeble presumption which may be readily displaced.

---

54 [2010] 1 SLR 52 at [245]–[248]. See also *Jumaat bin Mohamed Sayed v Attorney-General* [2022] SGHC 291 at [36].

55 See, *eg*, *Bank of India v Rai Bahadur Singh* [1994] 1 SLR(R) 89 at [11]–[24]; Walter Woon, "The Applicability of English Law in Singapore" in *The Singapore Legal System* (Kelvin Y L Tan ed) (Singapore University Press, 2nd Ed, 1999) at p 230; Andrew BL Phang, "Cementing the Foundations: The Singapore Application of English Law Act 1993" (1994) 28(1) *University of British Columbia Law Review* 205; Andrew Phang, "Reception of English Law in Singapore: Problems and Proposed Solutions" (1990) 2 SAcLJ 20; and Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Singapore Academy of Law, 2006) at pp 19–49. See also *Loh Siew Keng v Seng Huat Construction Pte Ltd* [1998] SGHC 197 at [215]–[222]. In some cases, though, the answer may be straightforwardly clear: see, *eg*, *Re Will of Loke Soh Lui* [1997] 3 SLR(R) 956 at [40]–[47].

56 *Bank of India v Rai Bahadur Singh* [1994] 1 SLR(R) 89 at [14]; and Singapore Parl Debates; Vol 61, Sitting No 7; [12 October 1993] (Prof S Jayakumar, Minister for Law).

38 It is hence submitted that instead of hoping to gain some sort of tactical advantage by trying to show that such an English rule is presumptively applicable in Singapore, one should simply focus on the nub of the issue: Is that rule appropriate for Singapore's circumstances?[57] If it is appropriate, then the court would accept it as Singapore law. In substance then, the way one would analyse whether such English rules apply in Singapore should be the same as for rules from any other jurisdiction. In *Foo Jong Long Dennis v Ang Yee Lim*,[58] the defendants precisely tried to make such a "Gotcha!"-type argument based on s 3(1) of the Application of English Law Act[59] to say that a Singapore court was bound to apply a particular English rule (decided in the 1980s), but the Singapore High Court ultimately focused on whether that rule was appropriate for Singapore (and it concluded that it was not).[60]

39 In innumerable cases in Singapore today, the courts consider and adopt or follow rules held in English cases decided after 27 November 1826 but before 12 November 1993 without mentioning s 3 of the AELA. They focus on whether the rule in such cases is appropriate for Singapore, and if it is so, adopt it for Singapore. Indeed, in most recent cases in which the courts mentioned s 3 of the AELA, it is only to underscore *the spirit behind it* – that Singapore aims to develop an autochthonous legal system and so our courts should adopt an English rule only if it is appropriate for Singapore's circumstances.[61]

57 *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 at [247].
58 [2015] 2 SLR 578.
59 Cap 7A, 1994 Rev Ed.
60 *Foo Jong Long Dennis v Ang Yee Lim* [2015] 2 SLR 578 at [48]–[54].
61 See, *eg*, *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 at [30]–[31]; *TQ v TR* [2009] 2 SLR(R) 961 at [51]–[53]; *ACB v Thomson Medical Pte Ltd* [2017] 1 SLR 918 at [175]; and *Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2018] 2 SLR 866 at [10].