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REMEMBERING THE LATE JUSTICE G P SELVAM: A BRILLIANT LEGAL MIND

When retired Judge of the Supreme Court of Singapore, Mr Govinda Pannir Selvam, passed away on 23 October 2022, the Singapore legal community mourned the loss of a brilliant legal mind. He was remembered as a "legendary admiralty lawyer" and an "excellent mentor" who "really loved the law" and could "turn his mind to any legal problem". As a lawyer and judge, he was sharp, straightforward and fair. This article briefly narrates Justice Selvam's distinguished life in the law, reminisces about his generosity of spirit and pays tribute to his remarkable contributions to jurisprudence and the development of Singapore law.

Gerome **GOH** Teng Jun[1]
LLB (Summa Cum Laude) (Singapore Management University);
Magistrate and Deputy Registrar, State Courts of Singapore;
Adjunct Faculty, Yong Pung How School of Law,
Singapore Management University.

I. Introduction

1 When retired Judge of the Supreme Court of Singapore, Mr Govinda Pannir Selvam ("Justice Selvam"), passed away on 23 October 2022, the Singapore legal community mourned the loss of a truly brilliant legal mind. Justice Selvam had served Singapore in various capacities, made remarkable contributions to jurisprudence and the development of Singapore law and touched the lives of many. Lawyers who have had the privilege of interacting with Justice Selvam remember him for his incisive mind, mastery of legal principles, generosity and strong sense of fairness.

2 His formidable legal and non-legal skills left a deep impression on many in the legal profession. Sundaresh Menon CJ remembered Justice Selvam as a "super-lawyer" with exceptional intellect and strength of character. Mr K Shanmugam, Minister for Home Affairs and Minister

1 This article is written in the author's personal capacity and the opinions expressed herein are entirely the author's own views. The author thanks Judith Prakash JCA for the discussions had and her kind contribution in sharing her memories of Justice Selvam which inspired this tribute. The author is also grateful to Sundaresh Menon CJ for sharing his tribute to Justice Selvam and Mrs Arfat Selvam for her insightful comments and suggestions.

for Law, recalled that when he was a pupil (or trainee solicitor) in Drew & Napier, Justice Selvam was one of the firm's leading litigators alongside Mr Joseph Grimberg SC and Mr Harry Elias SC. He was also a "legendary admiralty lawyer" who could "turn his mind to any legal problem".[2] Judith Prakash JCA described Justice Selvam as an "excellent mentor" who was "not only an expert in the [admiralty] field, but also a lawyer who really loved the law and kept on learning it and thinking about it throughout the years".[3] Mr Leon Yee, Chairman of Duane Morris & Selvam, also noted Justice Selvam's "distinguished contribution to the law, his honesty, integrity and professionalism" alongside his "love for the law" and "determination".[4]

3 This article briefly narrates Justice Selvam's life in the law, reminisces about his generosity of spirit and pays tribute to his remarkable contributions to jurisprudence and the development of Singapore law.

II. Justice Selvam's life in the law

4 The extraordinary achievements of Justice Selvam are particularly intriguing given his humble beginnings. He was born in Tamil Nadu in India and his early schooling was in Tamil stream schools. He only learnt to speak the English language from the age of 15 years from the use of dictionaries, after he was brought to Singapore by his elder brother, Mr G Murugaiyan, a lawyer at the criminal bar.[5] Yet, he went on to graduate at the top of his class with a Bachelor of Laws degree from the University of Singapore (now National University of Singapore) in 1968.

5 Justice Selvam taught trust law briefly as Assistant Lecturer with the law faculty of the University of Singapore and was later admitted as an Advocate and Solicitor of the Republic of Singapore in 1969. At the invitation of then-Senior Partner of Drew & Napier, Mr Joseph Grimberg SC, he began his career in litigation practice with Drew & Napier and quickly developed a leading practice in shipping, admiralty, banking and international trade. His opponents soon learnt that he was

2 "K Shanmugam SC: GP Selvam" *Facebook* (23 October 2022) <https://m.facebook.com/k.shanmugam.page/posts/677294220426779/> (accessed 28 August 2023).

3 "In Conversation with: Justice Judith Prakash" *Ministry of Law Singapore* (27 May 2021) <https://insight.mlaw.gov.sg/articles/legal-developments/2021-05-27-in-conversation-with-justice-judith-prakash> (accessed 28 August 2023).

4 "Duane Morris and Selvam Appoints Judge G. Pannir Selvam as Senior Mentor Emeritus" *Duane Morris & Selvam LLP* (11 July 2018) <https://dnmrs.co/pressreleases/duane_morris_selvam_appoints_judge_g_pannir_selvam_senior_mentor_emeritus_0718.html> (accessed 28 August 2023).

5 "K Shanmugam SC: GP Selvam" *Facebook* (23 October 2022) <https://m.facebook.com/k.shanmugam.page/posts/677294220426779/> (accessed 28 August 2023).

extremely clever and made a formidable and strategic litigator. He was renowned for having a powerful analysis of the law which was always tackled from first principles and an excellent command of every minute factual detail. He later rose to Senior Partner of Drew & Napier.

6 In 1991, Justice Selvam was elevated to high judicial office. He served as Judicial Commissioner of the Supreme Court for a three-year period and as Judge of the Supreme Court in 1994 for a further seven years before he retired in 2001. In his tenure as Judge, Justice Selvam delivered almost 200 judgments covering a wide range of civil, commercial, arbitration, and admiralty and shipping matters. He was also a member of the Supreme Court Working Party on Civil Procedure and the Rules Committee, which introduced procedural measures for expeditiously clearing the backlog of civil and admiralty cases.[6]

7 Following his retirement from the Supreme Court Bench, Justice Selvam continued to contribute to the legal profession in numerous ways. He served as member of disciplinary tribunals constituted under the Legal Profession Act 1966[7] to investigate matters relating to the professional conduct of lawyers practising in Singapore. Notably, he was selected and appointed Chairman of the Maldives' Commission of National Inquiry (the "Commission") in 2012 to enquire into the events that resulted in the transfer of power from then-President Mohamed Nasheed, the first democratically-elected President of the Maldives. Over the course of six months, the Commission interviewed a total of 293 witnesses and delivered a report setting out important findings and suggestions on the functioning of democracy in the Maldives.[8]

8 In 2013, Justice Selvam was appointed Chairman of the Committee of Inquiry into the Little India riot. The Little India riot was a troubling episode in Singapore's history and the work of the Committee of Inquiry was under much public scrutiny. The inquiry led by Justice Selvam was robust and thorough and the Committee of Inquiry's recommendations were accepted by the Singapore Government in full.[9]

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6 "Duane Morris and Selvam Appoints Judge G. Pannir Selvam as Senior Mentor Emeritus" *Duane Morris & Selvam LLP* (11 July 2018) <https://dnmrs.co/pressreleases/duane_morris_selvam_appoints_judge_g_pannir_selvam_senior_mentor_emeritus_0718.html> (accessed 28 August 2023).

7 2020 Rev Ed.

8 *Report of the Commission of National Inquiry, Maldives* (30 August 2012) (Chairmen: Mr Ismail Shafeeu & Justice GP Selvam) <https://www.conireport.org/_files/ugd/84c1f8_163559366b434117a929d45b3cb65512.pdf> (accessed 28 August 2023).

9 Nur Asyiqin Mohamad Salleh, "Little India Riot: Government accepts all 8 recommendations from the COI" *The Straits Times* (7 July 2014) <https://

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9 Justice Selvam also remained in touch with legal practice as an international arbitrator; he helped establish and became a consultant with Selvam LLC (later Duane Morris & Selvam LLP) where he provided valuable input in international arbitration matters. For more than a decade, he also advised the Government of Union of Myanmar in transactional and dispute resolution matters.[10]

10 With his passion for the law, it was little surprise when he was appointed C J Koh Professor of Law at the National University of Singapore, a professorship engaging distinguished legal experts to teach, participate in research, and bring their knowledge and expertise to the community and Singapore.[11]

11 Judges, practitioners and students alike would be intimately familiar with Justice Selvam's extraordinary contributions to court procedure and litigation as editor-in-chief of *Singapore Civil Procedure* ("*White Book*") from 2003 to 2015. As an authoritative and comprehensive commentary on the Rules of Court, the *White Book* has been indispensable to the practice of civil litigation in Singapore. Despite some ten amendments to the Rules of Court since the *White Book* was first published in 2003, Justice Selvam oversaw successive editions of the *White Book* which gave authoritative guidance on the rules of Singapore civil procedure to practitioners and judges alike.

12 In 2007, former Chief Justice Chan Sek Keong remarked that the legal profession "[owed] a great debt to [Justice Selvam] for his unstinting and untiring work"[12] as editor-in-chief of the *White Book*. In 2012, Menon CJ noted that a special mention was due to Justice Selvam for bringing his extensive experience as a practitioner and his peerless knowledge as a former judge to bear in making the *White Book* an extremely valuable resource.[13] In 2014, upon the end of Justice Selvam's tenure as editor-in-chief of the *White Book*, Menon CJ recognised the momentous impact Justice Selvam had on the legal profession in no uncertain terms. He stated:[14]

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www.straitstimes.com/singapore/little-india-riot-government-accepts-all-8-recommendations-from-the-coi-0> (accessed 28 August 2023).

10 "Duane Morris and Selvam Appoints Judge G. Pannir Selvam as Senior Mentor Emeritus" *Duane Morris & Selvam LLP* (11 July 2018) <https://dnmrs.co/pressreleases/duane_morris_selvam_appoints_judge_g_pannir_selvam_senior_mentor_emeritus_0718.html> (accessed 28 August 2023).

11 "Professor Hans Tjio delivers C J Koh Professorial Lecture" *National University of Singapore* (31 August 2022) <https://law.nus.edu.sg/ewbclb/media/professor-hans-tjio-delivers-c-j-koh-professorial-lecture/> (accessed 28 August 2023).

12 *Singapore Civil Procedure 2007* (Sweet & Maxwell Asia, 2007) at Foreword.

13 *Singapore Civil Procedure 2013* (Sweet & Maxwell Asia, 2013) at Foreword.

14 *Singapore Civil Procedure 2015* (Sweet & Maxwell Asia, 2015) at Foreword.

> Last, but most certainly not least, a special mention is due to Mr. G. P. Selvam. … Mr. Selvam has been the Editor-in-Chief of the White Book since its first edition was published in 2003. His contributions towards an indigenous White Book are immense and cannot be overstated. I know I speak for the entire legal community in Singapore in thanking him for his years of dedication and the unstinting work he has done in taking charge of its publication. His extensive knowledge and experience stemming from his career in practice and as a Judge of the Singapore High Court will be sorely missed.

III. Justice Selvam's generosity of spirit

13 While much can be said about Justice Selvam's distinguished legal career and his many contributions to Singapore's legal profession, many who had the privilege of interacting with him remember him for his great generosity of spirit. He had a great memory for cases and was always willing to hear a colleague out whenever they were in need. Justice Selvam made especial efforts to mentor younger colleagues and share his experience and wisdom with them. Despite his numerous accomplishments, he was humble and kind with those who had the privilege of interacting with him.

14 At a memorial honouring Justice Selvam, Menon CJ shared his impressions of Justice Selvam as a brilliant lawyer, astute judge and generous mentor:

> [His] accomplishments at Drew between 1969 and 1991 were simply staggering. Let me explain this a little. The legal profession in those decades still carried something of a post-colonial hangover. Mr Selvam did not fit into the archetype of the commercial litigator of the time. He was not white; instead, he was proudly Singaporean Indian. He was a graduate of our Law School, still in its early days, and not of one of the Oxbridge colleges. He did not speak with a posh accent; and he was not physically large. But within that small, somewhat rough-hewn package was an exceptional brain. Mr Selvam was blessed with a powerful intellect that was paired with a spirit that was always curious, always searching, always inquiring, always thinking. I think that must have given him the confidence and self-belief to take on the competition and that is precisely what he did. By 1974, he had taken over from Tony O'Connor as the Head of the Shipping Department at Drew, and he was well on his way to becoming one of the most formidable shipping lawyers in our legal history, while also establishing himself as a leading light in areas such as banking and international trade. By the time he left Drew, his, unquestionably, was the strongest shipping practice in Singapore.
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> And his intellect was paired with a generous spirit that looked to help others. … Mr Selvam also trained and mentored generations of brilliant young lawyers who followed in his wake. Two of them, Judith Prakash and Steven Chong, are now my colleagues in the Court of Appeal, and have in their own right become titans in the same areas over which Mr Selvam held sway. And a third has had

> and continues to have an immense influence on various aspects of our legal system and indeed of our society in his capacity as our Minister for Law and for Home Affairs. In mentoring others, Mr Selvam's legacy will doubtless continue.
>
> I want, finally, to share a personal anecdote. I first met Mr Selvam in 1990. I knew of him of course, but he was well out of my league. I was therefore surprised to receive a call from him one day. He told me that he had heard I was doing quite a lot of construction law work and asked if I would go over to see him. Of course, I went; and it turned out that he was working on a construction law matter and wanted a quick chat to bounce some ideas on how he might approach the issue and why he thought the authors of the leading texts might be wrong on a point. As I think back to that encounter, I cannot help but recall again the brilliance of the man, and yet his humility in calling a young lawyer he didn't know over to his office to share his thoughts with.
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> Over the course of the years that followed, I had the occasion to appear before Justice Selvam. These hearings were always challenging because he would have thought about the material and would have insights that only he would have seen, which made it especially difficult to come prepared. And when he retired, he stayed in touch, encouraged me in my work, and gave me suggestions and advice.

15 Prakash JCA also gave a touching tribute which revealed much about Justice Selvam the mentor, partner and friend:

> At the beginning of 1976, I joined Drew & Napier and worked directly with Selvam in the shipping department. Selvam was my boss until 1981 when I switched roles and moved to banking and corporate work. Throughout my time in Drew & Napier, and even after he left for the Bench in 1991, Selvam was a teacher, a mentor and a close friend.
>
> I joined the Bench one year after Selvam. By then I had been away from active court practice for more than a decade. Selvam, of course, was aware of this and offered to help me cope. He conducted an unofficial judicial induction programme during the first two weeks of my stint by making me sit with him on the Bench in several cases, particularly family law cases, to help me understand how to handle trials, applications and open court matters generally.
>
> I learned a huge amount from Selvam. I shall forever be indebted to him for his generosity in sharing his knowledge and experience. Outside the law, he was equally generous and supportive of his colleagues, friends and of course Arfat and his beloved daughters. He never stopped wanting to learn new things. He was a voracious reader in many fields and whenever he found a particularly good book, perhaps on law or medicine or nutrition or financial systems, he would buy several copies of the book and distribute them.

IV. Justice Selvam's contributions to legal jurisprudence

16 Turning now to Justice Selvam's legacy as a judge, curating a selection of judgments penned by him amidst the vast range of decisions

he had issued was no easy feat. A great number of his judgments were reported for their clear articulation of legal principles which were consistently expressed with brevity and precision. Drawing some common threads across his judgments which have withstood the test of time, this section seeks to highlight some of his salient qualities as a judge and the immense impact of his contributions to jurisprudence and the development of Singapore law.

A. The ability to see the bigger picture

17 Justice Selvam had a valuable ability to see the bigger picture in the cases that he heard. He appreciated the nuanced role that the law plays in governing relationships across the full spectrum of society, shaping people's behaviour and administering justice. He was not one to miss the forest for the trees. Indeed, several of his judgments reveal that beyond the peculiarities of the factual matrix, Justice Selvam understood the broader context in which legal principles and rules were meant to operate. This was evident in his approach to the rules of civil procedure.

18 In relation to summary judgment applications under O 14 of The Rules of the Supreme Court, 1970 (now O 9 r 17 of the Rules of Court 2021[15]), Justice Selvam articulated a robust approach towards summary judgment in *Hua Khian Ceramics Tiles Supplies Pte Ltd v Torie Construction Pte Ltd*[16] ("*Hua Khian Ceramics*") for cases in which the defendant raised the set-off defence and particularly in commercial and construction cases. He recognised that in many cases, the delay resulting from having to wait for a trial may cause severe or even irreparable loss to the plaintiff. In doing so, he drew support from the English Court of Appeal decision of *Ellis Mechanical Services Ltd v Wates Construction Ltd*[17] where Lawton LJ commented that one of the perils of commercial life for sub-contractors in the building trade was that serious disputes may develop between the main contractor and the building owner leading to either of them repudiating the main contract and resulting in the cash flow stopping. In such building disputes, cases often dragged on and on and the cash flow was held up. In the majority of these cases, because one party or the other cannot wait any longer for the money, there would be some kind of compromise, very often not based on the justice of the case but on the financial situation of one of the parties.

19 With that in mind, Justice Selvam considered it the duty of the court "to closely examine points of set-off raised by a defendant and to

15 2020 Rev Ed.
16 [1991] 2 SLR(R) 901 at [21]–[24].
17 [1978] 1 Lloyd's Rep 33 at 36.

ensure that the true purpose [was] not to cause delay to the plaintiff".[18] This was consistent with the approach by Yong Pung How J in *Invar Realty Pte Ltd v Kenzo Tange Urtec Inc*.[19] Yong J stated that where a defendant objected to an application for summary judgment based on a cross-claim, the plaintiff's claim and the defendant's cross-claim must be taken separately. If there was no defence to the plaintiff's claim other than a plausible cross-claim, then judgment must be entered on the plaintiff's claim with a stay of execution while the cross-claim should proceed to trial. In this way, the plaintiff would not be put to the expense and trouble of proving their claim but the defendant would also not be unjustly injured.

20 Consistent with this, Justice Selvam also highlighted that the court's jurisdiction to give leave to defend and the power to stay execution was a discretionary one and it was axiomatic that a defendant who invited the court to exercise the discretionary power must produce sufficient relevant material for the court to justify a decision in his favour. He made it clear that the grant of a stay of execution was not a matter of course.

21 Some seven years later, Justice Selvam had occasion to reflect upon the robust approach towards summary judgment applications in *MP-Bilt Pte Ltd v Oey Widarto*.[20] He observed that the rule of practice stated in *Hua Khian Ceramics* to the effect that the courts should apply a robust approach when considering applications for summary judgment, particularly in commercial and construction cases where cash flow is the life blood to make commerce work, was applied to good end and had earned a good reputation for Singapore. This approach has been followed by the High Court on several occasions over the years.[21]

22 Most recently, Aedit Abdullah J, in *DBS Bank Ltd v Lam Yee Shen*[22] ("*DBS Bank*"), applied the robust approach towards summary judgment applications in the context of O 83 proceedings under the Rules of Court[23] for an order of possession of a mortgaged property which were also summary in nature. Abdullah J's reasoning bore some similarity to

18 *Hua Khian Ceramics Tiles Supplies Pte Ltd v Torie Construction Pte Ltd* [1991] 2 SLR(R) 901 at [22].
19 [1990] 2 SLR(R) 66 at [11]–[15].
20 [1999] 1 SLR(R) 908 at [13].
21 *Hawley & Hazel Chemical Co (S) Pte Ltd v Szu Ming Trading Pte Ltd* [2008] SGHC 13 at [35]; *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 768 at [58]; *Republic Airconditioning (S) Pte Ltd v Shinsung Eng Co Ltd (Singapore Branch)* [2012] SGHC 46 at [11]; *DBS Bank Ltd v Lam Yee Shen* [2021] 5 SLR 1202 at [13(c)].
22 [2021] 5 SLR 1202 at [13(c)].
23 Cap 332, R 5, 2014 Rev Ed.

Justice Selvam's analysis of the broader context of the need for cash flow in commercial and construction cases. In *DBS Bank*, Abdullah J reasoned that the application of the robust approach would give effect to security underpinning the provision of finance for those seeking help to purchase properties and without such a robust approach, would-be purchasers would not be able to find financing at all.

23 In relation to the court's approach towards striking out a claim summarily either under O 18 r 19 of The Rules of the Supreme Court, 1970 (now O 9 r 16 of the Rules of Court 2021) or the court's inherent jurisdiction, Justice Selvam displayed great acuity in explaining the court's general reluctance to do so in *Tan Eng Khiam v Ultra Realty Pte Ltd*.[24] He explained that a cause of action was a claim based on a legal entitlement or the violation of a legal right. The assertion of a claim must set out all the essential acts to support the claim. If a purported claim did not comply with those criteria or the statement of claim on its face showed that it was not sustainable, a defendant may apply to strike out the statement of claim on the ground that it did not disclose a reasonable cause of action. In this inquiry, the pleaded facts were to be presumed true in favour of the plaintiff.[25]

24 Justice Selvam rationalised the trite principle that courts are reluctant to strike out claims summarily as "anchored on the judicial policy to afford a litigant the right to institute a *bona fide* claim before the courts and to prosecute it in the usual way".[26] Therefore, whenever possible, the courts will endeavour to let the plaintiff proceed with the action unless his case was wholly and clearly unarguable.[27] Again, Justice Selvam was guided by the fundamental purpose of the courts as an avenue for access to justice and broader context of the role of civil procedure in giving one and all the opportunity to air their grievances in a court of law. His reasoning was approved by the Court of Appeal in *Riduan bin Yusof v Khng Thian Huat*[28] and has been cited by the Singapore courts in multiple decisions since.[29]

25 Apart from his approach to the rules of civil procedure, Justice Selvam's ability to see the bigger picture also manifested when

24 [1991] 1 SLR(R) 844.
25 *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] 1 SLR(R) 844 at [29].
26 *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] 1 SLR(R) 844 at [31].
27 *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] 1 SLR(R) 844 at [31].
28 [2005] 2 SLR(R) 188 at [27].
29 *The Vasiliy Golovnin* [2007] 4 SLR(R) 277 at [54]; *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd* [2009] 2 SLR(R) 814 at [171]; *Low Heng Leon Andy v Low Kian Beng Lawrence* [2013] 3 SLR 710 at [11]; *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd* [2020] 5 SLR 665 at [31].

he dealt with complex commercial cases. In *Star Cruise Services Ltd v Overseas Union Bank Ltd*[30] ("*Star Cruise*"), Justice Selvam demonstrated his mastery of diverse areas of law such as the nature of bills of exchange, conflict of laws, claims in restitution of money had and received, right of innocent passage under public international law and the governing law of a contract formed on a ship at sea. However, as the dispute arose in the context of payments made in respect of gambling transactions taking place on board a cruise ship flying the flag of Panama while it was outside Singapore waters, it was the civil law of gaming and the legal concept of *nudum pactum* that took centre stage.[31] Justice Selvam observed that the concept of *nudum pactum* as applied to gaming and wagering contracts had been "much misunderstood" during the last century and a half and the "objective of the law was ignored by lawyers and judges alike".[32] He thus conducted an impressive review of the legal history and public policy underlying the unenforceability of gambling debts and related transactions in England and Singapore.[33]

26 After reviewing the relevant English legislation, Justice Selvam concluded that public policy was to "suppress gambling on credit and protect property from capture by gamblers".[34] It was also to "declare that the courts of justice are out of bounds to gamblers and that the courts will not settle or collect gambling debts. The courts exist for more important business and will not assist those who make gambling their business".[35] As for Singapore, Justice Selvam observed that the end effect of the then-applicable s 6(1) of the Civil Law Act[36] ("CLA 1994") was "more drastic in Singapore than in England because [securities given in respect of gambling contracts] even in the hands of innocent holders for value are void and unenforceable".[37] He continued by making the following observations:[38]

> (a) First, the purpose of s 6 was not to prohibit games and wagering or make them illegal. Aside from the provisions of the Common Gaming Houses Act,[39] all gaming and wagering was lawful. At the same time, they were not valid and were all void.

30 [1999] 2 SLR(R) 183.
31 *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 at [16].
32 *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 at [20].
33 *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 at [28].
34 *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 at [25].
35 *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 at [25].
36 Cap 43, 1994 Rev Ed.
37 *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 at [67].
38 *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR(R) 183 at [68]–[69].
39 Cap 49, 1985 Rev Ed.

(b) Second, all gaming and wagering debts were debts of honour. The law did not interfere with or proscribe honour among the players. There was no prohibition against payment of the loss provided the debt was met with honest money.

(c) Third, the law objected to people coming to the courts to settle their disputes and it manifested its objection by making all contracts and agreements by way of gaming void. They were devoid of all legal effect. The courts of justice were out of bounds to claims based on gaming or wagering because no action can be brought or maintained to enforce them. The doors of justice were closed to them. Sections 6(2) and 6(5) of the CLA 1994 have clamped down on credit gambling by denying legal remedy to enforce gaming debts and securities based on them. It has done so for public policy reasons with a history of some 450 years.

(d) Finally, the prohibition included accessory contracts before the actual game and derivative contracts after the play. In the case of a composite-contract, if the gaming contract is the central or matrix contract, the whole composite-contract comprising the central, accessory and derivative contracts would be voided and affected by s 6. The court, when faced with a gaming transaction, must take the scene in its totality and determine what the true nature of the contract is and give effect to s 6 to promote its purpose and object.

27 The Court of Appeal, in *Poh Soon Kiat v Desert Palace Inc*,[40] considered Justice Selvam's review of the history and public policy of gaming legislation in England "very helpful" and adopted Justice Selvam's analysis of the applicable public policy underlying s 6 of the CLA 1994 as the *subsisting* public policy applicable under s 5 of the Civil Law Act[41] today.[42] In doing so, the Court of Appeal disagreed with the view taken by two previous Court of Appeal decisions, *Star City Pty Ltd v Tan Hong Woon*[43] and *Liao Eng Kiat v Burswood Nominees Ltd*,[44] that gambling was no longer contrary to Singapore's public policy.[45] Justice Selvam's *Star Cruise* decision showed his uncanny ability to see the larger context even in the realm of public policy and interpret the applicable statutory law consistently with that context.

40 [2010] 1 SLR 1129.
41 Cap 43, 1994 Rev Ed.
42 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 at [81] and [88].
43 [2002] 1 SLR(R) 306.
44 [2004] 4 SLR(R) 690.
45 *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 at [91].

B. Interest in the development of the law

28 When Justice Selvam was elevated to the Supreme Court Bench, legal jurisprudence in Singapore was at a developmental stage. Much reliance was placed on English law. Efforts were made in the 1990s to establish an autochthonous legal system by rejecting the automatic reception of English law and abolishing appeals to the Privy Council.[46] It was therefore important to carefully consider the applicability of common law principles in Singapore. Justice Selvam always did so with an interest in the sound development of the law. Whether he dealt with trite principles or novel points of law, he regularly employed a thoughtful and thorough approach towards the law which featured as the guiding backdrop in his judgments.

29 In a series of decisions in *Haron bin Mundir v Singapore Amateur Athletic Association*[47] ("*Haron bin Mundir*"), *Lee Kuan Yew v Tang Liang Hong*[48] ("*Lee Kuan Yew*") and *Arul Chandran v Gartshore*[49] ("*Arul Chandran*"), Justice Selvam adopted the English position set out by the House of Lords in *Addis v Gramophone Co Ltd*[50] ("*Addis*") that general damages for mental distress was not claimable in breach of contract cases in Singapore and attempted to explore the rationale underlying the general rule.[51]

30 In *Haron bin Mundir*, Justice Selvam rejected a claim for general damages for emotional damage, mental anguish, humiliation and reputation by an amateur athlete against a sports club of which he was a member; the athlete had been suspended by said sports club from all forms of track and field activities in and out of Singapore for 18 months.[52] Justice Selvam followed *Addis* and held that as a general rule, damages for frustration, injured feeling, mental distress, humiliation and loss of reputation will not be awarded for breach of contract subject to three well-known exceptions, namely: (a) actions against a banker for refusing to pay a customer's cheque when he has in his hands funds of the customer's to meet it; (b) actions for breach of promise of marriage; and (c) actions where the vendor of real estate, without any fault on his part,

46 Goh Yihan & Paul Tan, "Singapore law ready to influence development of law elsewhere" *The Straits Times* (16 January 2015) <https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=3389&context=sol_research> (accessed 28 August 2023).
47 [1991] 2 SLR(R) 494.
48 [1999] 1 SLR(R) 533.
49 [2000] 1 SLR(R) 436.
50 [1909] AC 488.
51 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [12]–[30].
52 *Haron bin Mundir v Singapore Amateur Athletic Association* [1991] 2 SLR(R) 494 at [41].

fails to make title.[53] He also noted an additional exception developed more recently where the contract was to provide comfort, peace of mind or freedom from distress and it was breached.[54] Justice Selvam opined that the basis for refusing general damages of mental distress in cases of contractual breach was that the test of remoteness in contract was different from tort.[55] The object of awarding damages in contract was also different from tort. The law of contract was concerned with a defendant's failure to improve the claimant's position by his failure to keep a promise. In contract, the loss was monetary and, being measurable in terms of money, was therefore special. The law of tort, on the other hand, was concerned with the plaintiff's position made worse by a wrongdoing of the defendant. The damage was in the main non-economic and, being immeasurable, was general. Damages must therefore be assessed. Except in certain peculiar or exceptional circumstances, general damages for physical and moral injury were not recoverable in contract unless the same facts also gave rise to a claim in tort.[56]

31 In *Lee Kuan Yew*, Justice Selvam made a further attempt to explain another facet of the underlying rationale for the general rule. He stated that the reasons were based on historical and policy grounds. Damages, namely a monetary judgment, was a common law remedy. Injunction was an equitable relief. A court of equity in granting damages when an injunction was dissolved resorted to the common law remedy of damages. Since equity followed the law, it could only award damages on common law basis. At law, the general rule was that in contract cases only special damages were awarded. Special damages must be pleaded and proved. In tort, damages were at large (estimated without proof).[57] With reference to cases where damages for pain and suffering, mental suffering or mental distress had been awarded in actions for breach of contract, Justice Selvam suggested that those were cases where tortious negligence overlapped with contractual negligence. Where tort and contract claims merged and the principal claim was for breach of contract, general damages for mental distress were awarded as an ancillary relief to damages for breach of contract.[58] *Lee Kuan Yew* was upheld by the Court of Appeal.[59]

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53 *Addis v Gramophone Co Ltd* [1909] AC 488 at 495.
54 *Jarvis v Swans Tours Ltd* [1973] QB 233; *Jackson v Horizon Holidays Ltd* [1975] 1 WLR 1468; *Perry v Sidney Phillips & Son* [1982] 1 WLR 1297.
55 *Haron bin Mundir v Singapore Amateur Athletic Association* [1991] 2 SLR(R) 494 at [44].
56 *Haron bin Mundir v Singapore Amateur Athletic Association* [1991] 2 SLR(R) 494 at [46].
57 *Lee Kuan Yew v Tang Liang Hong* [1999] 1 SLR(R) 533 at [30].
58 *Lee Kuan Yew v Tang Liang Hong* [1999] 1 SLR(R) 533 at [33].
59 *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 at [54]–[67].

32 In *Arul Chandran*, Justice Selvam reviewed the law on whether general damages were claimable for mental distress in light of the decision of the House of Lords in *Malik and Mahmud v Bank of Credit and Commerce International SA*[60] ("*Malik*"). He began from the historical perspective that English law acted on:[61]

> … the apriorism that pure mental suffering without physical injury was an inevitable fact of interpersonal relationships in private and public life alike. Unlike actionable physical injury, which arises from an external cause, mental distress stems from inherent predisposition of the individual. As it arose from the constitution and circumstances of the individual it did not traditionally give a cause of action. After all, people must learn to accept with a certain degree of stoicism the slings and arrows of this vale of tears. In such instances, they should be slow to rush to the law with a tale of tears and fears save in certain recognised circumstances. It makes no difference whether the event causing such suffering was the commission of a tort or the breaking of a contract. In the time-honoured language of the law, such suffering is too remote for recompense at law. …

33 He noted that, at one time, this was thought not to have been "a desirable situation because it failed to deter the callous conduct of irresponsible people".[62] That was why Wright J in *Wilkinson v Downton*[63] attempted to "move the boundary". Justice Selvam observed that even though that was a tort case, "the novelty failed to flourish". In tort, the general position was that damages for mental suffering (such as in a claim for conspiracy) became a subsidiary element in the assessment of damages.[64]

34 Reviewing several academic authorities on contract law, he found that the state of the law was that normally no damages in contract will be awarded for injury to the claimant's feelings, or for his mental distress, anguish, annoyance, loss of reputation or social discredit by the breach of contract. The rule was one of policy and applied notwithstanding the foreseeability of the distress or some other adverse event. Other reasons why recovery for mental distress may be inappropriate included that: (a) it was not directly related to the economic effect of the breach; (b) it was open to speculation; (c) it may be the subject of frivolous claims; and (d) it was not reasonably within the contemplation of the breaching party.[65]

60 [1998] AC 20.
61 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [13].
62 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [13].
63 [1897] 2 QB 57.
64 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [14].
65 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [16]–[17].

35 On the related issue of recognising damage to one's reputation in the context of contract law, Justice Selvam considered that *Malik* was a "slight variation" to the rule that damages for loss of reputation was not normally awarded for breach of contract since the protection of reputation was the role of the tort of defamation.[66] The decision made it possible to recover financial loss (or special damages) where breach of a contract damages one's reputation which in turn caused foreseeable financial loss to the claimant. The claim was nevertheless subject to the established limiting principles of remoteness, causation and mitigation.[67] Justice Selvam also perceptively noted that *Malik* did not affect the law relating to *general damages* for breach of contract since it was a case where the claim was for *special damages*, which was financial loss. Thus, for breach of contract, the compensation was limited to proven financial loss.[68] It has been observed that Justice's Selvam's view of *Malik* was shared by Lord Steyn in the subsequent House of Lords decision of *Johnson v Unisys Ltd*.[69]

36 Justice Selvam also noted that while certain authorities[70] had postulated the proposition that general damages would be awarded for mental distress arising from a breach of contract if that was within the contemplation of the parties and that *Addis* was being abandoned, this was outdated law which had died a silent death.[71] In that sense, the law had come full circle in reaching back to the trite principle that general damages for mental distress was not claimable in breach of contract cases. He cited with approval the English Court of Appeal decision in *Watts v Morrow*[72] ("*Watts*") where Bingham LJ stated that a contract-breaker was not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension or aggravation which his breach of contract may cause to the innocent party. This rule was not founded on the assumption that such reactions are not foreseeable, which they surely are or may be, but on considerations of policy.[73]

66 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [19].
67 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [20].
68 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [23].
69 [2003] 1 AC 518 at [21]. See also, *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ch 21, at para 21.137.
70 *Cox v Philips Industries Ltd* [1976] 1 WLR 638 (overruled by *Bliss v South East Thames Regional Health Authority* [1987] ICR 700); *Tippett v International Typographical Union* (1976) 71 DLR (3d) 146; *Brown v Waterloo Regional Board of Commissioners of Police* (1982) 136 DLR (3d) 49; *Whelan v Waitaii Meats Ltd* [1991] 2 NZLR 74.
71 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [25]–[30].
72 [1991] 1 WLR 1421.
73 *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436 at [30].

37 Justice Selvam's decision in *Arul Chandran* remains well-cited to date.[74] The essence of his reasoning was also confirmed by the Court of Appeal in *ACB v Thomson Medical Pte Ltd*[75] when it cited *Watts* and stated that the reason for the well-established rule that the law does not generally award recovery for reputational damage and mental distress arising from a breach of contract was that the law of contract concerned itself with the remediation of pecuniary damage and the scope for recovering damages for non-pecuniary loss in contract was greatly limited. Further, from a policy perspective, the law of contract has long concerned itself with commercial affairs, in which contract-breaking is, "an incident of commercial life which players in the game are expected to meet with mental fortitude".[76] The same justification of course did not apply to tort given that it deals with obligations imposed by the general law and is primarily concerned with the prevention of harm.

38 While it has been suggested that this position may not be entirely satisfactory and there may be reason for further development of the law in the future,[77] Justice Selvam's sound articulation of the underlying reasoning for the rationale behind the current position nevertheless provides ample material for debate in the search to fine-tune the law. For instance, in *Kay Swee Pin v Singapore Island Country Club*[78] where damages for mental distress was awarded to a suspended member of a club, the learned Assistant Registrar Teo Guan Siew discussed the policy concerns articulated in *Arul Chandran* and distinguished them on the basis that the club membership constituted a contract which had as its central focus the provision of pleasure, enjoyment and "other mental benefits". AR Teo also commented that "while the traditional analysis in this area of the law [was] to identify categories of losses which [were] recoverable and those which [were] not as a matter of policy, there [was] an increasing trend both in case law as well as academic literature to approach the issue from the perspective of remoteness of damage".[79] The Court of Appeal endorsed AR Teo's "admirable analysis of the applicable principles of law".[80]

74 *Wong Leong Wei Edward v Acclaim Insurance Brokers Pte Ltd* [2010] SGHC 352 at [49]; *HT SRL v Wee Shuo Woon* [2019] 5 SLR 245 at [100]; *Reed, Michael v Bellingham, Alex* [2022] 2 SLR 1156 at [116].

75 *ACB v Thomson Medical Pte Ltd* [2017] 1 SLR 918.

76 *ACB v Thomson Medical Pte Ltd* [2017] 1 SLR 918 at [53].

77 *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ch 21, at paras 21.147–21.153.

78 [2008] SGHC 143.

79 *Kay Swee Pin v Singapore Island Country Club* [2008] SGHC 143 at [79]–[80].

80 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [102].

39 In the province of land law, Justice Selvam had the distinction of setting the first Singapore law precedent in *Trustees of the Estate of Cheong Eak Chong v Medway Investments Pte Ltd*[81] regarding the natural right of the landowner for support from the adjoining land and the natural right of the owner of higher land in respect of the flow of water. He observed that there appeared to be no reported cases in Singapore in which the two principles of law had been discussed or applied.[82] After reviewing the English authorities, he held that the principles of law applied in Singapore. First, every landowner had a natural right to support from the adjacent and subjacent soil which arises from the ownership of land. This was not an easement and was enforceable by legal and equitable remedies. Practically, an adjoining landowner was under an obligation not to excavate the land in a manner which may cause a subsidence of his neighbours' land. Second, the owner of a higher land has the right to let rainwater flow naturally on to or into the adjacent lower land provided there was a natural user of the high ground. While this principle was taken from civil law, it was by then well established in common law. This was an adjunct right to the natural right to support when it has been substituted by an artificial support such as a retaining wall. In the nature of things, these two rights existed in perpetuity provided there was no radical alteration of the topography of the upper tenement. Justice Selvam's decision was affirmed on appeal by the Court of Appeal.[83]

40 Justice Selvam also had an astute commercial sense and a keen eye for any form of sharp practice by the parties. It was therefore fitting that in *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd*,[84] Justice Selvam formulated the applicable test for ascertaining a sham and expounded on the law relating to sham agreements. He began by defining a sham transaction as one which was "good in form but false in fact" and observed that it stemmed from the equitable principle that the court looks to the substance of the matter rather than the form. This was because of the abhorrence the law had towards concealment and circumvention. Whilst these principles first originated in the court of chancery, they were later applied by other courts to do effective

81 [1996] 2 SLR(R) 607.
82 *Trustees of the Estate of Cheong Eak Chong v Medway Investments Pte Ltd* [1996] 2 SLR(R) 607 at [12].
83 *Medway Investments Pte Ltd v Trustees of the Estate of Cheong Eak Chong* [1997] 1 SLR(R) 934.
84 [1992] 2 SLR(R) 858.

justice between parties.[85] After reviewing several English precedents, he succinctly stated that:[86]

> To ascertain whether documents represent the true relationship between the parties the following test as laid down by Lindley LJ in [*Yorkshire Railway Wagon Company v Maclure* (1881) 19 Ch D 478] … and Diplock LJ in [*Snook v London and West Riding Investments Ltd* [1967] 2 QB 786] … may be formulated: Whether the documents were intended to create legal relationships and whether the parties did actually act according to the apparent purpose and tenor of the documents.

41 Justice Selvam's formulation of the test for finding a sham has withstood the test of time. Several subsequent High Court decisions have applied this test with approval[87] and the Court of Appeal, in *Toh Eng Tiah v Jiang Angelina*,[88] specifically endorsed Justice Selvam's analysis of the sham doctrine. It held that the essential element of a sham was that the parties did not intend to create the legal relations that the act was done or documents executed gave the impression of creating. It also explained that the legal basis for the courts not enforcing a sham agreement lay in the absence of an intention to create legal relations, an essential element to the finding of the existence of a contract. Nevertheless, it ought to be noted that the sham doctrine as it related to contracts was a specific doctrine distinct from, although related to, the doctrine of intention to create legal relations.[89]

C. Reasoning by first principles

42 Justice Selvam had a firm grasp of the law. Perhaps due to his experience as a teacher, he believed in approaching the law from its fundamentals. He would often seek to understand the first principles which applied in that specific species of law and reason from those principles why the law is as it is. This was evident from several important judgments that he penned in the area of shipping and admiralty law, which spanned the basis of the court's admiralty jurisdiction to the purposive interpretation of the provisions of the High Court (Admiralty

85 *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1992] 2 SLR(R) 858 at [41].

86 *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1992] 2 SLR(R) 858 at [48].

87 *Orix Capital Ltd v Personal Representative(s) of the Estate of Lim Chor Pee* [2009] 4 SLR(R) 1062 at [58]; *Chng Bee Kheng v Chng Eng Chye* [2013] 2 SLR 715 at [59]; *Koon Seng Construction Pte Ltd v Chenab Contractor Pte Ltd* [2008] 1 SLR(R) 375 at [64].

88 [2021] 1 SLR 1176.

89 *Toh Eng Tiah v Jiang Angelina* [2021] 1 SLR 1176 at [74] and [76].

Jurisdiction) Act[90] (the "HCAJA"). In those decisions, he certainly brought his extensive experience as a formidable shipping and admiralty lawyer to bear.

43 In *The Ohm Mariana ex Peony*[91] ("*The Ohm Mariana*"), Justice Selvam set out the fundamental point that the admiralty jurisdiction of the High Court of Singapore was essentially statutory and established by the HCAJA. It was settled law that where a statute conferred a limited and circumscribed jurisdiction, it could not be enlarged by parties by agreement or otherwise. One could overcome an irregularity but not a nullity. Where a court exercised jurisdiction which it did not possess, the proceedings amounted to nothing. The HCAJA laid down conditions that must be satisfied before a claimant could avail himself of the right to institute *in rem* proceedings against a ship and the powerful right to effect an arrest of the ship. Since the *in rem* jurisdiction was created and limited by statute, the parties could not confer such jurisdiction by agreement or waiver. In the absence of one of the claims enumerated in s 3 of the HCAJA, the court would be acting without jurisdiction.[92] This statement of the law has been well-cited by the Singapore courts.[93]

44 Justice Selvam also readily drew guidance from the historical origins of admiralty law when the occasion called for it. In *The Bolbina*,[94] Justice Selvam conscientiously traced and extracted concepts, principles and practices of English admiralty law to explain the dual nature of admiralty actions *in rem*. He explained that while it had been said that an admiralty action *in rem* was an action against a *res*, the English admiralty action *in rem* was not a pure action *in rem* for it contained latent elements of actions *in personam*.

45 Before 1875, he noted that the proceeding *in rem* was in the form of a warrant directing the admiralty marshal to arrest the ship. The warrant contained a citation to the interested parties to appear and defend the *res*. If the owners defaulted, a decree was issued giving the plaintiffs possession of the ship. Later, on proof of the perishable condition of the ship, the ship was sold and the proceeds distributed to those who had proved their claims against the ship. If the owner appeared, he could provide bail and assume liability *in personam*. The proceedings therefore inevitably incorporated *personam* elements which were manifested when

90 Cap 123, 1985 Rev Ed.
91 [1992] 1 SLR(R) 556.
92 *The Ohm Mariana ex Peony* [1992] 1 SLR(R) 556 at [15]–[16] and [54].
93 *The Trade Resolve* [1999] 2 SLR(R) 107 at [45]; *The Alexandrea* [2002] 1 SLR(R) 812 at [10]; *The Chem Orchid* [2015] 2 SLR 1020 at [42]; *The Jeil Crystal* [2021] SGHC 292 at [48].
94 [1993] 3 SLR(R) 894.

the owners entered an appearance. The *in rem* element thus was confined to the arrest by service of warrant on the ship and the subsequent sale and distribution of sale proceeds of the ship without the owner making himself potentially liable.[95] In 1875, the restructuring of the courts creating the Supreme Court of Judicature resulted in the practice that all actions had to be begun by writ, which was a common law process. Thus, the writ was compulsorily introduced into admiralty causes. The citation calling the owners and other persons to appear and defend the *res* was transferred from the warrant of arrest to the *in rem* writ of summons. The warrant procedure for arrest, however, was retained.[96]

46 Thus, Justice Selvam explained that the combined introduction of the writ *in rem* and the retention of the warrant of arrest gave rise to the following scenarios:[97]

> (a) First, where the writ *in rem* was served and the owner provided security and entered an appearance, the proceedings at all times remained *in personam*. The warrant procedure and therefore the *in rem* contents of the action remained dormant. The appearance was *in personam* and the liability was also *in personam*, the ship being kept out of the scene.
>
> (b) Second, where the writ *in rem* was served on the ship and the warrant was executed and there was no appearance entered, the plaintiff would be left to proceed in default and have the ship sold to satisfy all claims against it in accordance with the rules of priority. This was the true admiralty action *in rem*. The service of the writ on the ship combined with the arrest and sale of the ship gives complete sense to the *in rem* content of the proceedings.
>
> (c) Third, where the writ *in rem* was served on the ship or solicitors and the ship was arrested and the owners entered an appearance but did not provide bail or other *personam* security, this would be a mixed action *in rem* and *in personam*. The service was both *in rem* and *in personam*. The action was *in rem* and *in personam* because the ship was taken as security and a judgment bound the *res* as well as the defendants.

47 In relation to the invocation of jurisdiction *in rem*, Justice Selvam also clarified the distinction between the creation of a statutory lien (*ie*, claim without a maritime lien) by the issue of the writ *in rem* and the invocation of jurisdiction *in rem*. For the former, it was the issue of the writ which created the statutory lien and protected the ship from any

95 *The Bolbina* [1993] 3 SLR(R) 894 at [11].
96 *The Bolbina* [1993] 3 SLR(R) 894 at [12].
97 *The Bolbina* [1993] 3 SLR(R) 894 at [13].

change in ownership thereafter even if the writ had not yet been served. Once the statutory lien was created, it was not extinguished so long as the writ *in rem* was in force. Service of the writ could not extinguish it because the right to arrest remained alive. For the latter, the invocation of jurisdiction *in rem* was accomplished by the arrest of the ship and service alone without arrest kept the matter in limbo.[98] Justice Selvam's clear explication of admiralty law from first principles remains instructive to date and has been cited with approval by the Singapore courts.[99]

48 In a series of other decisions, Justice Selvam also had the opportunity to set out the proper interpretation of several provisions and phrases in the HCAJA essential to the court's admiralty jurisdiction. In *The Indriani*,[100] Justice Selvam was asked to decide on the proper construction of the use of the phrase "arising out of any agreement" in s 3(1)(*h*) of the HCAJA which states that the admiralty jurisdiction of the court shall be to hear and determine "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship". Specifically, he had to determine whether "arising out of any agreement" meant the wider meaning of "connected with the agreement" or the narrower meaning of "arising under the agreement". Considering several English precedents, Justice Selvam observed that the statutory words have been construed widely in favour of the plaintiff against the shipowner.[101] He cited in approval Lord Brandon of Oakbrook's judgment in the House of Lords decision of *The Antonis P Lemos*,[102] where Lord Brandon stated that the expression "arising out of" is on its ordinary and natural meaning capable of being the equivalent of the wider expression "connected with". Lord Brandon listed four grounds for this conclusion: (a) that a domestic statute designed to give effect to an international convention should generally be given a broad and liberal construction; (b) the arrangement and wording in Art 1(1) of the 1952 International Convention for the Unification of Certain Rules relating to the Arrest of Seagoing Ships[103] ("Brussels Convention") indicated that the expression "arising out of" is used in the wider sense; (c) the rearrangement and rewording of Art 1(1) of the Brussels Convention cannot have intended to substitute a narrow meaning for the wide meaning; and (d) the English authorities

98 *The Bolbina* [1993] 3 SLR(R) 894 at [14]–[18].
99 *The URSUS* [2015] SGHCR 7 at [15]; *The Echo Star ex Gas Infinity* [2020] 5 SLR 1025 at [26]; *The Ocean Winner* [2021] 4 SLR 526 at [32]–[37].
100 [1995] 2 SLR(R) 458.
101 *The Indriani* [1995] 2 SLR(R) 458 at [16].
102 [1985] 1 All ER 695.
103 (10 May 1952), 439 UNTS 193 (entered into force 24 February 1956).

of *The St Eleftherio*[104] and *The Sennar*[105] support the wider meaning of the expression. Justice Selvam adopted this position in Singapore.[106]

49 On appeal, the Court of Appeal affirmed Justice Selvam's interpretation of the expression "arising out of any agreement" as the wider meaning of "connected with the agreement". After reviewing the relevant authorities, it agreed with Justice Selvam and commented that the wide construction taken was in line with decisions of the Singapore courts in relation to s 3(1)(*f*) of the HCAJA (where "any claim for loss of life or personal injury" was interpreted widely to mean any claim arising out of loss of life or personal injury) and s 3(1)(*i*) of the HCAJA (where "any claim … in the nature of salvage" was interpreted to mean any claim arising out of salvage) which were aimed at giving a wide and extensive effect to the admiralty jurisdiction conferred by the HCAJA. The Court of Appeal thus held that s 3(1)(*h*) was wide enough to include claims in tort and it was immaterial whether the parties to an action were the parties to the agreement or agreements concerned.[107] This decision was considered particularly significant by the Court of Appeal in *The MARA*[108] "in that a very broad and liberal construction was given to [s 3(1)(*h*) of the HCAJA]". The Court of Appeal also noted that the approach of the Singapore courts had been to give a broad and liberal construction to the statutory provisions conferring admiralty jurisdiction on the courts.[109]

50 As regards the relationships between the concepts of registration, ownership and beneficial ownership of the ship within the meaning of s 4(4) of the HCAJA, Justice Selvam explained in *The Opal 3 ex Kuchino*[110] ("*The Opal 3*") that by comity of maritime nations, every foreign-going merchant ship was required to have a nationality and fly its national flag. Nationality to a ship was assigned by registration in the country whose nationality is sought by the ship. And it was up to each flag state to fix the conditions for the acquisition of nationality and registration. The registration of the ship was effected by her owners. Ownership therefore preceded registration. Justice Selvam stated that registration and papers issued pursuant to it afforded *prima facie* but not conclusive evidence of the true ownership and nationality of the ship.[111] The Court of Appeal, in *The Ohm Mariana*,[112] affirmed Justice Selvam's view in *The Opal 3*

104 [1957] P 179.
105 [1983] 1 Lloyd's Rep 295.
106 *The Indriani* [1995] 2 SLR(R) 458 at [18]–[23].
107 *The Indriani* [1996] 1 SLR(R) 5 at [14].
108 [2000] 3 SLR(R) 31.
109 *The MARA* [2000] 3 SLR(R) 31 at [15].
110 [1992] 2 SLR(R) 231.
111 *The Opal 3 ex Kuchino* [1992] 2 SLR(R) 231 at [8].
112 [1993] 2 SLR(R) 113.

that registration of a ship would not determine, and was not conclusive proof of, true ownership even though in most instances it would be. This ultimately depended on the circumstances. In determining the ownership of a ship, the court was not confined merely to looking behind the register but quite often had to look behind the register to determine the ownership of the ship.[113]

51 In *The Kapitan Temkin*,[114] Justice Selvam developed on this and explained that the certificate of registration was important documentary evidence in deciding who the beneficial owners of a ship for purposes of jurisdiction are, especially when it was produced and relied upon on behalf of the State or a department which issued the certificate. It was so because the certificate of registration was also a certificate of ownership. In some ways, the certificate of registration was similar to a certificate of title issued under the Torrens system of land registration. The title evidenced by the certificate of registration was similarly indefeasible, subject to rectification in cases like error and fraud. The certificate of registration fulfilled the dual function of proclaiming the nationality and ownership of the ship. All transfers of ownership were done on the basis of information in the register of ships of the port to which the ships belong. No merchant ship may, therefore, lawfully enter or leave Singapore or any country without a certificate of registration so that the authorities and others know the owner who is responsible to observe the laws applicable to the ship and discharge the obligations incurred by it. More importantly, a potential purchaser of a registered ship cannot receive title which was not shown in the register. In other words, the person stated as the owner and the State which issued the certificate would generally be estopped from asserting a contrary proposition unless the register was rectified before third parties acted on it. Thus, even though entry regarding ownership in the ship registry was not conclusive evidence of who the beneficial owners of a ship are for the purposes of s 4(4) of the HCAJA, in most cases it would be so.[115]

52 For the expression "beneficial owner" in s 4(4) of the HCAJA, Justice Selvam explained in *The Opal 3* that although this was not defined in the HCAJA and the registered owner in many cases would *prima facie* be the beneficial owner, the ship register was not, for the purposes of s 4(4) of the HCAJA, conclusive proof of beneficial ownership under all circumstances. Section 4(4) of the HCAJA "admits of proof that someone other than the legal or registered owner is the beneficial owner". He also considered that the principles to be applied to determine beneficial

113 *The Ohm Mariana ex Peony* [1993] 2 SLR(R) 113 at [32], [34] and [36].
114 [1998] 2 SLR(R) 537.
115 *The Kapitan Temkin* [1998] 2 SLR(R) 537 at [7].

ownership must be extracted from various sources of law and the question approached from different aspects depending on the circumstances of the case. Some of the principles that could be applied are: (a) principles of equity and trust; (b) principles relating to fraudulent conveyances to delay or defeat creditors and principles relating to piercing the veil of incorporation; and (c) principles of law relating to transfer of title to goods and, in particular, passing of title in sale of goods including foreign law; and principles of estoppel.[116] The High Court, has in a series of decisions, cited with approval Justice Selvam's explanation of the principles to be applied to determine beneficial ownership.[117] In *The Kapitan Temkin*, Justice Selvam further observed that the purpose and effect of the use of the expression "beneficial ownership" therefore was to protect claims against fraudulent concealment and sham transfers designed to defeat a claim and also to protect authentic owners who were not personally liable to the claimants. Hence, most applications which went behind the register would be by the claimants and not owners. In either case, there must be clear evidence to look beyond the register and the certificate.[118]

D. Strong sense of fairness

53 Justice Selvam had an intuitively strong sense of fairness which showed in his decisions. In dealing with the facts or in exposition of legal principles, he would try his utmost to balance the scales of justice. In the well-known case of *Gunapathy Muniandy v James Khoo*[119] ("*Gunapathy (HC)*"), a medical negligence case involving radiosurgery against cancer of the brain, Justice Selvam made observations in relation to the law of medical negligence on two important aspects: (a) the treatment of expert medical evidence as contrasted with the treatment of experts in the non-medical context; and (b) the importance of informed consent to allegations of negligence in respect of medical advice. On the facts, Justice Selvam found in favour of the plaintiff that the doctors were negligent in diagnosis, treatment and advice. However, the Court of Appeal in *Khoo James v Gunapathy d/o Muniandy*[120] ("*Gunapathy (CA)*") reversed Justice Selvam's decision, finding that the doctors were not negligent in their diagnosis, treatment and advice relating to the plaintiff's case. The Court of Appeal also expressed disapproval with Justice Selvam's views in relation to the two aspects of the law of medical negligence.

116 *The Opal 3 ex Kuchino* [1992] 2 SLR(R) 231 at [11].
117 *The Skaw Prince* [1994] 3 SLR(R) 146 at [14]; *The Min Rui* [2016] 5 SLR 667 at [34].
118 *The Kapitan Temkin* [1998] 2 SLR(R) 537 at [7]; see also *The Ivanovo* [2000] 1 SLR(R) 263 at [31].
119 [2001] SGHC 165.
120 [2002] 1 SLR(R) 1024.

54 On the treatment of expert medical evidence as contrasted with the treatment of experts in the non-medical context, Justice Selvam stated that the law on expert evidence requires that "expert medical evidence, like all expert evidence, be subject to the scrutiny of the court and to be discarded if found to be unsupported by sound reason or logic".[121] He considered that the court's approach towards medical expert evidence should in fairness be treated similarly to all expert evidence. He drew support from the House of Lords' decision in *Bolitho v City and Hackney Health Authority*[122] ("*Bolitho*") in which Lord Browne-Wilkinson, with whom the other Lords agreed, applied *obiter dicta* from the Privy Council's decision in *Edward Wong Finance Co Ltd v Johnson Stokes & Masters*[123] ("*Edward Wong*"), a case involving negligence in the legal profession.[124] Lord Browne-Wilkinson stated that:[125]

> … there are some cases where, despite a body of professional opinion sanctioning the defendant's conduct, the defendant can properly be held liable for negligence … if in a rare case, it can be demonstrated that the professional opinion is not capable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible.

55 However, in addressing Justice Selvam's statement, the Court of Appeal in *Gunapathy (CA)* hesitated to "apply such a broad brush to what [was] really two differing strands of judicial reasoning".[126] It reasoned that although the principles set out in *Bolam v Friern Hospital Management Committee*[127] ("*Bolam*") represented the starting point for the standard of care for all professionals, its specific test referred to the medical profession. Hence, the willingness of the court to adjudicate over differing opinions in other professions should not be transposed to the medical context. While judges were eminently equipped to deal with the practice and standards of, for example, the legal profession, the same cannot be said with regard to the intricacies of medical science. The fact that *Edward Wong* was cited in *Bolitho* should not therefore be treated as an invitation to merge the treatment of expert medical evidence with that of other expert evidence.[128]

56 On one reading, this statement in *Gunapathy (CA)* has been taken to stand for the proposition that only the medical profession was to be "accorded the defences built into the *Bolam* test and the *Bolitho*

121 *Gunapathy Muniandy v James Khoo* [2001] SGHC 165 at [10.36].
122 [1998] AC 232.
123 [1984] 1 AC 296.
124 *Gunapathy Muniandy v James Khoo* [2001] SGHC 165 at [10.34]–[10.35].
125 *Bolitho v City and Hackney Health Authority* [1998] AC 232 at 243.
126 *Khoo James v Gunapathy d/o Muniandy* [2002] 1 SLR(R) 1024 at [69].
127 [1957] 1 WLR 582.
128 *Khoo James v Gunapathy d/o Muniandy* [2002] 1 SLR(R) 1024 at [69].

addendum, with the practices of every other profession subject to the full and robust scrutiny of the court". The Court of Appeal in *Hii Chii Kok v Ooi Peng Jin London Lucien*[129] ("*Hii Chii Kok*") went so far as to comment that if that were true, *Gunapathy (CA)* would have "[given] rise to a troubling inconsistency". It also observed that such a reading would, in any case, have been overtaken by subsequent decisions which have applied the *Bolam* test and *Bolitho* addendum to non-medical contexts as well.[130]

57 The Court of Appeal in *Hii Chii Kok* generously read *Gunapathy (CA)* to simply have been "responding to an attempt by the plaintiff-patient to *undermine* the *Bolam* test in the medical context by relying on non-medical cases (such as *Edward Wong*) in which the court appeared to be relatively willing to second-guess professional opinions as illogical"[131] [emphasis in original]. Thus, *Gunapathy (CA)* was not stating that the reluctance of the court to adjudicate over differing opinions in the medical context should not be transposed to other professions. Rather, *Gunapathy (CA)* simply reminded future courts of the practical need for a judge to approach with circumspection (but not unyielding unwillingness) any invitation to reject the opinion of a competent medical expert on the basis that it is illogical. This was justified on the basis of the degree of uncertainty and complexity of professional knowledge that informs the resolution of the issue in question which may not be constant across different situations and professions. The Court of Appeal in *Hii Chii Kok* thus clarified that while medical science was *one* domain in which the difficulty confronting a medically untrained judge might be particularly acute, the same may well apply to a non-medical case engaging an equally uncertain and technical body of knowledge.[132]

58 With the benefit of hindsight, it seems that Justice Selvam's statement that the law of expert evidence which required expert evidence to be scrutinised by the court and supported by "sound reason or logic" applies equally to medical evidence merely showed an astute intuition towards the development of the law that was ahead of his time. In *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong*,[133] the Court of Appeal had explained that the effect of the *Bolitho* addendum "affirms the supervisory judicial responsibility to ensure, at a minimum, that the expert opinion is defensible and grounded in logic and plain common sense".[134] When

129 [2017] 2 SLR 492.
130 See *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong* [2007] 4 SLR 460 and *PlanAssure PAC v Gaelic Inns Pte Ltd* [2007] 4 SLR 513.
131 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [74].
132 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [72]–[75].
133 [2007] 4 SLR 460 at [51].
134 *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong* [2007] 4 SLR 460 at [51].

assessing whether a professional has been negligent, courts will normally use the common practice within the relevant profession as a benchmark. However, notwithstanding that an expert witness may have considerable professional experience and knowledge about the reasonableness of prevailing standards, the court retains the supervisory responsibility to condemn an unjustifiably lax, albeit common, practice as negligent.[135] Thus, it is clear that while due weight must be given to the complexity of professional knowledge, Justice Selvam was correct in that the same general approach of supervisory scrutiny should fairly be applied towards all expert evidence. It is also noteworthy that the Court of Appeal in *Hii Chii Kok* saw fit to remind future courts that the fulfilment of the *Bolitho* addendum was not to be treated as a "mere formality" and this observation was made to address the concerns (which the Court of Appeal considered to some extent justified) that *Bolitho* had brought about little change and was too often paid no more than lip service by the courts. It unequivocally stated that "[t]o the extent that has indeed been the case, it should not continue to be so".[136]

59 On the importance of informed consent to allegations of negligence in respect of medical advice, Justice Selvam stated in *Gunapathy (HC)* that where "negligence is alleged in connection with a failure to furnish adequate and accurate information prior to the obtaining of the consent of the patient, a court can reach its own view independent of expert medical witnesses as to what is reasonable and responsible medical practice".[137] This view articulated an unstated conception that, in the area of medical advice, the need to grant the ability for a patient to make an informed choice on his or her treatment necessitated a stronger degree of oversight than the *Bolam* test was capable of. He referred to the House of Lord's decision in *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital*[138] ("*Sidaway*") where Lord Bridge stated that even where no expert witness in the medical field condemns the non-disclosure as being in conflict with accepted and responsible medical practice, the judge might in certain circumstances come to the conclusion that disclosure of a particular risk was so obviously necessary to an informed choice on the part of the patient that no reasonably prudent medical man would fail to make it.[139]

60 In *Gunapathy (CA)*, the Court of Appeal disagreed with Justice Selvam in no uncertain terms. It noted that Justice Selvam "clearly

135 *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong* [2007] 4 SLR 460 at [50]–[51].
136 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [111].
137 *Gunapathy Muniandy v James Khoo* [2001] SGHC 165 at [10.38].
138 [1985] AC 871.
139 *Sidaway v Board of Governors of the Bethlem Royal Hospital and the Maudsley Hospital* [1985] AC 871 at 900.

threw down the gauntlet and challenged the application of *Bolam* to the issue of advice".[140] In the Court of Appeal's words, "[n]either counsel … took up the opportunity to comment on this bold and, to our minds, *totally unwarranted restatement* of the law of negligence relating to medical advice"[141] [emphasis added]. It observed that Justice Selvam's citation of Lord Bridge's comment was not an accurate representation of the latter's view in *Sidaway* and nor was its extrapolation at all reflective of the *ratio decidendi* of the majority of the House of Lords in *Sidaway*. The Court of Appeal considered that Lord Bridge did not agree with Lord Scarman's dissenting view in *Sidaway* that it was for the court to determine what material risks a prudent patient was entitled to receive. Lord Bridge was only concerned that the question of advice and disclosure should not be abdicated entirely to the medical profession and his comment seemed very much like a forerunner to the more general qualification made by *Bolitho*. The Court of Appeal thus considered that this comment seemed clearly vindicated by and subsumed under the ruling in *Bolitho*.[142] It then emphasised that it was not appropriate to address a fully argued appeal on the merits of a doctrine of informed consent since the issue did not arise in the submissions. However, it felt compelled to address Justice Selvam's "inexplicable assumption that *Bolam* had been unceremoniously evicted from the issue of medical advice, and to make the observation that were this argument ever to arise in our jurisdiction, it would find *Sidaway* … to be somewhat shaky ground on which to stand".[143] The Court of Appeal thus followed the majority of the House of Lords in *Sidaway* and held that the *Bolam* test with the *Bolitho* addendum applied to all aspects of the doctor's duty including the issue of provision of medical advice.[144]

61 This remained the law until *Hii Chii Kok* in 2017. The Court of Appeal in *Hii Chii Kok* noted that *Gunapathy (CA)*, by accepting that the *Bolam* test and the *Bolitho* addendum applied to all aspects of the doctor's duty had in substance rejected the doctrine of implied consent, as it and the *Bolam* test were mutually incompatible. For clarity, the doctrine of implied consent takes the form of four propositions:[145]

> (a) The root premise is the concept that every human being of adult years and of sound mind has a right to determine what shall be done with his own body.

140 *Khoo James v Gunapathy d/o Muniandy* [2002] 1 SLR(R) 1024 at [133].
141 *Khoo James v Gunapathy d/o Muniandy* [2002] 1 SLR(R) 1024 at [134].
142 *Khoo James v Gunapathy d/o Muniandy* [2002] 1 SLR(R) 1024 at [141].
143 *Khoo James v Gunapathy d/o Muniandy* [2002] 1 SLR(R) 1024 at [142].
144 *Khoo James v Gunapathy d/o Muniandy* [2002] 1 SLR(R) 1024 at [142].
145 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [68]–[69].

(b) The consent is the informed exercise of a choice, and that entails an opportunity to evaluate knowledgably the options available and the risks attended upon each.

(c) The doctor must, therefore, disclose all "material risks"; what risks are "material" is determined by the "prudent patient" test (*ie*, when a reasonable person, in what the doctor knows or should know to be the patient's position would be likely to attach significance to the risk or cluster of risks in deciding whether to forego the proposed therapy).

(d) This is subject to the "therapeutic privilege" exception which enables a doctor to withhold from his patient information as to risk if it can be shown that a reasonable medical assessment of the patient would have indicated to the doctor that disclosure would have posed a serious threat of psychological detriment to the patient.[146]

62 In *Hii Chii Kok*, the Court of Appeal was persuaded to depart from the *Bolam* test and *Bolitho* addendum in relation to the provision of medical advice. It recognised that the aspect of medical advice had a significantly different complexion from the aspects of diagnosis and treatment because the patient was not (or need not be) a passive recipient of care, but an active interlocutor in whom ultimately rests the power to decide what course to pursue. Yet, they were in unequal positions because of the asymmetry of information. At the time the *Bolam* test was developed, much less emphasis was placed on the principle of patient autonomy (*ie*, a norm of respecting the decision-making capacities of autonomous individuals) than was the case in relation to the principle of beneficence (*ie*, a group of norms for providing benefits and balancing benefits against risks and costs). The doctor played a paternal role which required him to make decisions considered too important and too difficult to understand to be placed in the patient's hands. It was acceptable to keep a patient in the dark as to the risks and alternative treatments if this would make him more likely to undergo the treatment which was (as only the doctor could know) best for the patient's health. As long as this physician-centric view accorded with the expectations of society, there was perhaps no principled or practical difficulty with retaining the *Bolam* test as regards advice.[147]

63 However, this view did not persist. The Court of Appeal observed that even before the Supreme Court of the United Kingdom

146 *Canterbury v Spence* (1972) 464 F 2d 772.
147 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [113] and [115].

in *Montgomery v Lanarkshire Health Board*[148] ("*Montgomery*") changed the law in the UK, the increasing recognition of the need to treat patient autonomy seriously saw patient-centric approaches gain ascendance in parts of the US, Canada and Australia. It noted that the practice of the medical profession in Singapore as well had undergone the same transformation towards recognising patient autonomy as a principle of prime importance. The Court of Appeal considered that it would be wrong "to ignore this seismic shift in medical ethics and in societal attitudes towards the practice of medicine, in deciding how the realities of the doctor-patient relationship are to be reflected in the applicable legal standards for doctors".[149] A balance had to be struck between the principle of beneficence and the principle of patient autonomy, and between the doctor's perspective and the patient's perspective, such that neither dominated each other. Indeed, applying the *Bolam* test to determine what and how much information to impart to the patient would allow the doctor to withhold whatever he wishes to so long as some of his peers would have done the same. This outcome would have been incompatible with even a modest notion of patient autonomy and applying the peer review-based *Bolam* test to advice may even run the risk of the courts abdicating its role as the arbiter of individual rights.[150] The Court of Appeal thus departed from the *Bolam* test to a modified version of the test set out in *Montgomery* to govern the standard of care in relation to the provision of information and advice by a doctor to his patient. This modified test was intended to give recognition to the fact, previously overlooked, that the patient has a *prima facie* right to the information reasonably required to enable him to make a decision and the ultimate question is therefore whether the doctor was justified not to furnish that information.[151]

64 Again, with the benefit of hindsight, it seems that Justice Selvam was simply ahead of his time by making the bold statement that, in relation to the provision of medical advice, a court may reach its own view independent of expert medical witnesses as to what is reasonable and responsible medical practice. This was another instance where Justice Selvam's strong sense of fairness compelled him to give voice to the discomfort arising from the *Bolam* test overlooking the patient's perspective and autonomy in the area of medical advice many years before the law was ready to accept it. Justice Selvam's view on this was ultimately vindicated in *Hii Chii Kok*.

148 [2015] AC 1430.
149 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [120].
150 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [122].
151 *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492 at [118], [120], [126] and [135].

V. Conclusion

65 Justice Selvam left a legacy that deserves commendation. In his incredible life in the law, he made a deep impact on many as a teacher, mentor, lawyer and judge. Those who had the privilege of knowing him or working with him remember his generosity of spirit in sharing his knowledge, experience and advice to all around him. As a judge, Justice Selvam read widely and retained a great thirst for knowledge. He often did intensive research to understand the facts of the case and the expert evidence put before him. His analysis of the law, as evident from the brief review of his key judgments undertaken above, showed his ability to see the bigger picture, his keen interest in the law, his grasp of first principles and his strong sense of fairness. His many concise, principled and thoughtful judgments have withstood the test of time and provided valuable guidance to generations of legal practitioners. It has been an honour to pay tribute to this giant of our profession.