

## AN EMPIRICAL STUDY ON THE DEVELOPMENT OF SINGAPORE LAW

This article presents the preliminary findings and views of a comprehensive empirical study of Singapore law from 1965 to 2008. A significant component of this study involves a detailed empirical study into the development of Singapore law by reference to a number of objective indicia. From the empirical data collected, the study then briefly analyses the data gathered in a qualitative fashion. Here, the study draws conclusions as to how far we have come in the development of Singapore law in a wide range of important spheres, including civil, commercial, criminal, tort and constitutional law; how and why Singapore law has been shaped by foreign decisions; the trends and extrapolations that could be made in terms of the practice of judicial decision-making; and what some of the factors might be that account for these developments.

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### I. Introduction

1 Not unsurprisingly, the development of Singapore's laws mirrors the historical arc of our nation-building efforts.<sup>1</sup> Just as

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\* The authors are extremely grateful for the support and inspiration of the Honourable the Chief Justice Chan Sek Keong, whose issuance of Practice Direction 1/2008 (discussed below) (among other things) will no doubt be judged by history most favourably. But this project and article would not have taken off the ground without the profound insights and encouragement of the Honourable Judges of Appeal Justice Andrew Phang Boon Leong and Justice V K Rajah, to whom we first turned when the project was conceived. Rajah JA is also the head of the Committee for the Promotion of Singapore Law, a standing committee of the Singapore Academy of Law, which has so generously sponsored this project as well. The authors are also thankful for the assistance rendered by Mr Leon Foo and Ms Fazilah Comsari, of Rajah & Tann LLP, throughout this project. It will soon be obvious that this project has entailed an extensive (and often tedious) data-mining exercise, which would not have been possible without the tremendous efforts of the following (arranged alphabetically by surname): Mr Chai Wei Han, Mr Daniel  
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Singapore began (and very much still is) an immigrant society, the laws that governed (and very much still govern) have their roots in the laws of different nations. While predominantly influenced by English legislation and common law, Singapore's legislative and common law origins also find inspiration from other jurisdictions, most obviously from Australia (in the areas of land law and company law) and India (from which our Penal Code<sup>2</sup> and Evidence Act<sup>3</sup> were imported). But just as Singapore searches to find a national identity from the diversity of her people, the ambition to develop an autochthonous jurisprudence has been one that has captured the imagination for some time now.<sup>4</sup> As the brief conspectus of the development of Singapore law below will show, serious efforts have been taken towards this ambition – as an intellectual project in its own right and for the practical reason that our laws should reflect, where necessary, the unique circumstances of our country. As Singapore enters another critical juncture of the development of its jurisprudence – this time, as part of efforts to

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Gaw, Ms Darinne Ko, Mr Lau Kwan Ho, Mr Lee Soong Yan Kevin, Mr Nicholas Mai, Mr Sim Junhui, Mr Janahan Thiru, Ms Michelle Virgiany, Mr Samuel Wee Choong Sian, Ms Seah Li Min Cheryl, Mr Erik Widjaja, Mr Anthony Wong, and Mr Nicholas Wuan Kin Lek. Their enthusiasm always exceeded expectations, and they have made an invaluable contribution to this project. The law they study today is more Singaporean than ever, and they stand at the threshold of an exciting period of sustained local legal development. This article is dedicated to them. The authors would also like to thank the anonymous referees for their suggestions, as well as Sandra Tan for her painstaking editorial work. Needless to say, all errors remain the authors' alone.

- 1 The most comprehensive (and perhaps only) analysis in this respect to date may be found in Andrew Phang Boon Leong, *The Development of Singapore Law – Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990).
- 2 Cap 224, 2008 Rev Ed.
- 3 Cap 97, 1997 Rev Ed.
- 4 Autochthonous is simply the Greek equivalent of the Latin “indigenous”. It means “of the land” and is something not imported; it means independent. One of the very first advocates of the development of an autochthonous Singapore legal system was G W Bartholomew, former Dean of the Faculty of Law at the National University of Singapore. In an interview given in 1985, he stated that it was only a “question of time” before Singapore could have an autochthonous legal system, given its relatively young age: “In Conversation: Prof G W Bartholomew” (1985) 6 Sing L Rev 56. Indeed, most recently, the Singapore Court of Appeal in *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 at [133] stated that: “[L]ocal courts must simultaneously recognise that the days of a uniform common law are no longer a given. It is true that in the commercial context, there is more likelihood of (and desirability for) uniformity. However, even in the commercial setting, uniformity should not be taken too far.” For an insightful background reading on the adaption of foreign laws to Singapore's unique circumstances, see Chan Sek Keong CJ's speech at the New York State Bar Association Seasonal Meeting on 27 October 2009, available at <<http://supcourt.gov.sg>> (accessed 1 September 2010).

promote Singapore law as the *lex mercatoria* of the region<sup>5</sup> – it is perhaps time to take stock of how far we have come, and to indulge in a bit of crystal ball gazing.

2 This article is the introductory product of a yearlong empirical study undertaken of all *reported* judgments emanating from the Singapore courts (including the Privy Council and Malaysian Federal Courts where they involved appeals from the lower courts of Singapore) from 1965 to 2008. Research into 2009 and 2010 data is currently ongoing.<sup>6</sup> It is important to set the ambit of the current article, so that the reader can calibrate his or her appreciation of the findings and views presented. In short, the purpose of this article is to introduce the aims and methodology of this study. More substantively, this article presents some of the findings for the first part of the study (*viz*, examining the broad development of Singaporean jurisprudence by reference to key indicators) as well as the authors' preliminary views. In particular, the focus will be on the growth of and our courts' reliance on local jurisprudence (in contradistinction to our courts' reliance on foreign decisions), as well as the reliance on academic arguments in local judicial decisions. It is not sought, in the confines of this article, to determinatively assess every aspect of the developmental trajectory of Singapore law. Nor does this article seek to answer the more philosophical question as to "what constitutes a uniquely Singaporean jurisprudence". These are interesting questions, but it would be incorrect to see these as the primary purpose of this piece.<sup>7</sup> It is sufficient for the purposes here that references to "Singaporean jurisprudence" denotes the collective body of jurisprudence emanating from our courts (as an empirical fact), which may be more local (where they depart from positions elsewhere), more international (where there is more reliance on foreign jurisdictions) or a blend of both. The approach here is intentionally and primarily descriptive (and not prescriptive) – *ie*, how has Singaporean jurisprudence developed and what factors may account for this as opposed to whether these trends are desirable or not. But the authors think (and hope) that the telling of a story is just as important as analysing the story. And the story this article hopes to tell is the

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5 See generally *Full report of the Committee to develop Singapore legal sector* <[http://notes.app.internet.gov.sg/\\_48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/\\$file/Justice%20V%20K%20Rajah%20report.pdf](http://notes.app.internet.gov.sg/_48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/$file/Justice%20V%20K%20Rajah%20report.pdf)> (accessed 19 March 2009).

6 It is unfortunately not possible to include the 2009 and 2010 data into this article because of the publication lag in the reporting of the cases decided in 2009 and 2010. The information will be included in a later piece.

7 Indeed, these may not form part of the eventual aims of this study. The authors do not believe it is possible to *prescribe* what is a "uniquely Singaporean jurisdiction" short of *describing* what is actually happening.

development of Singapore law, presented statistically and with some preliminary commentary on the statistics.<sup>8</sup>

## II. Aims of the study

3 There are essentially three aspects to the substantive study, each of which constitutes a broad aim in itself.<sup>9</sup> First, the study attempts to understand how our jurisprudence has developed from an empirical perspective since Singapore's independence by reference to several key, objectively-verifiable, indicia which include the frequency as well as rate of approval by our courts of citations of foreign jurisdictions (and which), the frequency of citations by our courts of its own decisions, the frequency of citations of academic writings, and the length of judgments. This is termed the "internal" aspect of this study. The purpose for which such data has been mined is to distil observations as to the extent to which:

- (a) the Singapore courts are citing local decisions in preference to foreign decisions;
- (b) the Singapore courts are willing to depart from the traditionally-dominant English position;
- (c) the sources of foreign decisions have become more globalised and diversified; and
- (d) academic literature and other types of commentaries are being considered and influencing the development of our jurisprudence.

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8 Eventually, it is hoped that these statistics will provide food for thought as to the development of Singapore law. In later works, a more determinative assessment of why the law has developed in the way it has will be presented. However, it bears repeating, the authors do not think it is objectively possible to assess whether the way in which the law has developed is "correct". "Correctness" requires an external criterion of assessment, and if we are to believe that each country's laws develop on its own terms, it may not be possible to determinatively answer this (theoretically) interesting question.

9 Unfortunately, the authors do not claim credit for being fully original. A very early attempt to empirically measure the development of Singaporean jurisprudence was undertaken by a quartet of students from the National University of Singapore more than 20 years ago: see Lau Kok Keng *et al*, "Legal Crossroads – Towards a Singaporean Jurisprudence" (1987) 8 Sing L Rev 1. The present study builds on their contribution by expanding the number of indicia analysed, examining the promotion of Singapore law, and seeking to explain the empirical analysis by reference to the socio-economic developments that have taken place. See also Walter Woon, "The Applicability of English Law in Singapore" in *The Singapore Legal System* (Kevin YL Tan ed) (Singapore University Press, 2nd Ed, 1999) at p 230.

4 This survey is taken of all reported decisions in major and important spheres, cutting across personal law, commercial law and international law. Such an empirical study will provide the platform with which to properly test certain hypotheses on the development of Singapore law, as well as the practice of its judicial institutions. This flows also from a belief that the law, being a human construct, cannot be analysed in the abstract without recourse to factual happenings. Accordingly, a necessary first step is the collection of factual data with which to describe Singapore law from an empirical perspective.

5 Second, the study attempts to track, at least in broad terms, the extent to which Singapore jurisprudence has been “exported” either through academic writings or the judgments of foreign jurisdictions. This is termed the “external” aspect of the study. This is again a predominantly empirical study.

6 Third, the study attempts to map the empirical analysis against the socio-economic developments that have taken place as well as our stated desire to develop an autochthonous jurisprudence and to promote Singapore as a centre for legal services in the region. In other words, this part of the study aims to explain both the “internal” and “external” aspects qualitatively. This is also where certain postulates will be made with regard to Singapore law broadly, as well as the practices and development of its judicial institutions. Indeed, it is in this final phase of the project that what a “Singaporean jurisprudence” means will be discussed and an attempt to discern the jurisprudential thinking behind our courts’ decisions made. In this respect, the studies into the number of foreign decisions followed, distinguished, and not followed can be given flesh to by now understanding why Singapore law has departed from a particular country’s case law.<sup>10</sup>

7 Above all, the aims of this study are to discover patterns, based on objective indicia, in how Singapore jurisprudence has been developed since Singapore’s independence; to provide possible reasons that might account for those patterns; and, where appropriate, to extrapolate those trends. This study should be beneficial to both practitioners and academics. For practitioners, understanding how the courts are shaping the law, how receptive they are to foreign decisions, or how readily they would accept the views of academic literature, is invaluable when crafting submissions to court.<sup>11</sup> Academics, too, may

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10 Indeed, was there a broad reason such as a sharp divergent in jurisprudential thinking – for example, we in reliance on consequentialism and the foreign court in reliance on deontology?

11 See Professor Llewellyn in “From the Library: A Lecture on Appellate Advocacy” (2005) 7 J App Prac & Process 173 at 175–176. See also see Paul Tan, “Writing a Persuasive Appellate Brief” (2007) 19 SAclJ 337.

find the results of the study helpful in appreciating how and in what ways their works have contributed to the development of Singapore law. Our study (it is hoped) also lays the groundwork for further research into the decision-making process of the courts, its advantages, its disadvantages and possible areas for reform or reconsideration.<sup>12</sup>

### III. A brief conspectus of the development of Singapore law to date

#### A. A brief history of the Singapore legal system

8 A *brief* mention (owing to the constraints of space) needs to be made about the history of the Singapore legal system. In particular, the very close relationship between Singapore and English law must be outlined, for it is in this context that the significance of the Singapore courts' development of local law can be better understood.

9 The foundation of the Singapore legal system is clearly based on English law.<sup>13</sup> After Sir Thomas Stamford Raffles' arrival in 1819 and even after Singapore's independence in 1965, English law was regarded as being of very strong influence. In essence, English law has always been perceived as being "received" by the fledging Singapore legal system, therefore explaining the (as will be seen) strong connection between Singapore and English law. This connection exists even up to the present time. The mechanics of this reception is rather complicated, but may be divided broadly into two distinct periods: the first of which was prior to the passage of the Application of English Law Act ("AELA")<sup>14</sup> by Parliament in 1993, and the second period, after that passage.

##### (1) Pre-1993: Reception by three means

10 As for the first period, the detailed history of the reception of English law in Singapore prior to the passage of the AELA<sup>15</sup> need not be

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12 For example, the dynamics of judicial decision-making is fertile ground for academic literature in the US (see, as recent examples, Richard A Posner, *How Judges Think* (Harvard University Press, 2008) and Cass R Sunstein *et al*, *Are Judges Political? An Empirical Analysis of the Federal Judiciary* (Brookings Institution Press, 2006), but almost absent in Singapore.

13 The local literature pertaining to the reception of English law in Singapore is too numerous to list here completely. See, *eg*, Andrew Phang, "Reception of English Law in Singapore: Problems and Proposed Solutions" (1990) 2 SAclJ 20 at n 1 for a sampling of the available literature.

14 Cap 7A, 1993 Rev Ed. See generally Andrew Phang, "Cementing the Foundations: The Singapore Application of English Law Act 1993" (1994) 28 UBC LR 205 and Victor Yeo, "Application of English Law 1993: A Step in the Weaning Process" (1994) 4 Asia Bus LR 69.

15 Application of English Law Act (Cap 7A, 1993 Rev Ed).

elaborated in detail for present purposes, but it was believed that English law was received into Singapore by three means: (a) general reception; (b) specific reception;<sup>16</sup> and (c) imperial legislation.<sup>17</sup>

11 These three means govern the reception of English common law and legislation. Leaving aside the reception of English *legislation*, English *common law* was received in Singapore by way of *historical or general* reception through the Second Charter of Justice of 1826 (“Second Charter”).<sup>18</sup> The date of the Second Charter is important because the period between Singapore’s founding in 1819 and the promulgation of the Second Charter in 1826 is generally regarded as being mired in “legal chaos”, for no uniform system of law governed the fledging colony.<sup>19</sup> To resolve the chaotic state of events, the Second Charter was issued under Letters Patent establishing the Court of Judicature at Prince of Wales’ Island, Singapore and Malacca.<sup>20</sup>

16 This concerns the situation where the local statute expressly provides for the reception of English law. From 1824 to 1963, Singapore was part of the British Empire and any imperial statutes not repealed are still applicable. Again, a problem exists in that no comprehensive list of applicable statutes exists. See generally G W Bartholomew, “English Statutes in Singapore Courts” (1991) 3 SAclJ 1.

17 This is simply legislation enacted at Westminster by the English Parliament and which has been expressly extended to (here) Singapore. In some cases, a statute in defining the powers, privileges and jurisdictions of various persons refers to their English counterparts. Some statutes specifically refer to English law to fill in *lacunae* in the statute. Then, there may also be specific reception in the statute, such as in s 5 of the Civil Law Act (Cap 43, 1988 Rev Ed). Section 5 of the Civil Law Act itself provides for the *continuous* reception of English *commercial* law. Section 5 received English law with respect to mercantile law with several exceptions. English land law does not apply: (a) where the law in question gives effect to a treaty or international agreement that Singapore is not part of, it does not apply; (b) where the statute regulates the exercise of any business through penalties or providing licences, it does not apply; and (c) where there is corresponding Singapore written law. “For a sampling with regard to the *specific* reception of English commercial law under section 5 of the Civil Law Act,” see the list in Andrew Phang, “Reception of English Law in Singapore: Problems and Proposed Solutions” (1990) 2 SAclJ 20.

18 See generally Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006).

19 Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006) at pp 1–4. In fact, as Phang notes, in the period between 1819 and 1826, Sir Stamford Raffles did attempt to formulate some regulations, the legality of which is dubious and, therefore, not of particular moment in the context of Singapore legal history.

20 Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006) at pp 4–7. The court consisted “of the Governor, the Resident Counsellors as well as a Recorder as Judges, with the Recorder taking precedence next to the Governor”. A detailed account of the arrival of the Second Charter of Justice of 1826 to the Straits Settlements can also be found in J W Norton Kyshe, *A Judicial History of the Straits Settlements 1786–1890*, reprinted in (1969) 11 Malaya L Rev 38. The Proclamation of the Second Charter took place on 9 August 1827, which coincides with the date Singapore achieved full independence from British rule on 9 August 1965: see Andrew Phang Boon Leong, (cont’d on the next page)

Overnight, a single legal system for all colonies was put in place,<sup>21</sup> with established laws and institutions that were able to provide “Justice and Right”.<sup>22</sup> The controversy which ensued concerned the *body of law* which was received into Singapore. In particular, did the relevant “Justice and Right” clause in the Second Charter really import English common law into Singapore, given that there was no *explicit* reference to such?

12 In the landmark case of *Regina v Willans*,<sup>23</sup> it was held by Sir Peter Benson Maxwell R that the law of England, as it existed in 1826, was to be applied to the Straits Settlements, subject to modifications to suit the circumstances of the place and the customs, religions, usages, and manners of the native inhabitants.<sup>24</sup> Therefore, with that decision, it was accepted that the principles and rules of English common law – as of 1826 – and equity (as well as pre-1826 statutes of general application)

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*From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006) at p 5.

- 21 Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006) at p 7.
- 22 Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006). The material part of the Second Charter of Justice of 1826 reads as follows: “And We do further give to the said Court of Judicature of *Prince of Wales’ Island, Singapore and Malacca*, full Power and Authority, upon examining and considering the several Allegations and Proofs of the said Parties to each Suit, or to such of them as shall appear at the Trial or Hearing thereof, or of the Complainant or Complainants, or Parties promoting such Suit alone, in case the Defendant or Defendants shall make Default after Appearance, or say nothing, or confess the Petition of Complaint or *ex parte* the Petitioner, if Justice shall so require, and on examining and considering the Depositions of the Witnesses, *to give and pass Judgment and Sentence according to Justice and Right*: And in any case of any Proceeding removed from or originating in any inferior Court of Judicature, to remit the same thereto, as substantial Justice shall best be attainable; and also to award and order such Costs to be paid by either or any of the Parties to the other or others, as the said Court shall think just.” [emphasis added]
- 23 (1858) 3 Kyshe 16. Although the case was one from Penang, the three Settlements were effectively one political unit and thus its reasoning could be extended to Singapore. In a considered judgment, Maxwell R eventually held that: “The Charter directs that the Court shall, in those Cases, ‘give and pass judgment and sentence according to Justice and Right’. The ‘Justice and Right’ intended, are clearly not those abstract notions respecting that vague thing called natural equity, or the law of nature, which the Judge, or even the Sovereign may have formed in his own mind, but the justice and right of which the Sovereign is the source or dispenser. The words are obviously used in the same sense as in the well known Chapter of Magna Charta from which they were probably borrowed: ‘*nulli vendemus, nulli negabimus aut differemus justitiam vel rectum.*’ They are, in jurisprudence, mere synonymes for law, or at least only measurable by it; and a direction in an English Charter to decide according to justice and right, without expressly stating by what body of known law they shall be dispensed, and so to decide in a Country which has not already an established body of law, is plainly a direction to decide according to the law of England.”
- 24 See, eg, Andrew Phang, “Cementing the Foundations: The Singapore Application of English Law Act 1993” (1994) 28 UBC LR 205 at 208.

were received into Singapore with suitable modifications. While this has largely been thought to be the correct view,<sup>25</sup> there has been relatively contemporary academic opinion that English law was not actually received into Singapore, even during the time Singapore was a British colony.<sup>26</sup> However, whatever the theoretical challenges to the conventional view, it can now be confidently said that most of the prevailing problems<sup>27</sup> in this first period of “reception” have been resolved by the passage of the AELA<sup>28</sup> in 1993.

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- 25 There have been many cases which have followed *Willans* (1858) 3 Kyshe 16, in holding that 1826 is the correct “cut-off” date. See, eg, *In re Lu Thien* [1891] SLR 10; *Ismail bin Savoosah v Madinasah Merican* (1887) 4 Kyshe 602; and *Mahomed Ally v Scully* (1871) 1 Kyshe 254.
- 26 See Mohan Gopal, “English Law in Singapore: The Reception That Never Was” (1983) 1 Malayan LJ xxv at xxxviii. Briefly, Gopal’s argument was that English law was never received into Singapore because the language of the Second Charter of Justice of 1826 “is consistent with the view that English law was not received”. He further points out that “[c]ommentators and courts have erroneously ignored the arguments in favour of the non-reception thesis”. In this regard, British colonial practice shows that where English law was introduced into conquered territories it was done so expressly. Furthermore, the phrase “justice and right” was never used to introduce English law elsewhere. Finally, “[e]ven if reception was achieved its continuity was broken by subsequent instruments and events” [emphasis added]. For counter-arguments, see Andrew Phang Boon Leong, “English Law in Singapore: Precedent, Construction and Reality or The Reception That Had to Be” (1983) 2 Malayan LJ civ (systematically refuting Gopal’s arguments).
- 27 Among the other problems, one concerned the “cut-off date” for the general reception of English Law. Professor Phang has suggested that there has been some controversy with regard to the precise point in time, although the better view appears to be that the “cut-off date” should be 1826, the date the Second Charter of Justice was promulgated. It is desirable that a “cut-off date” be formally instituted in order to define a “fixed pool” of the received English law that would constitute the initial corpus of Singapore law from which further development can be effected. Problems might, however, arise with regard to the *common law*, the main argument being that the common law, being “timeless”, ought not to be subject to such a “cut-off date”. Taking on the discussion, the issue then arises whether post-1826 cases were binding because the local courts seem to follow the English decisions on common law. Theoretically, any subsequent developments of the common law by English courts do not automatically become law in Singapore. Indeed, a Singapore court is free to reject an English decision in favour of its own interpretation. See Andrew Phang Boon Leong, “Of Cut-Off Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore” (1986) 28 Malaya L Rev 242 at 243–249. In fact, the Privy Council has noted that the common law may run in different streams in different jurisdictions: *Australia Consolidated Press Ltd v Uren* [1969] 1 AC 590. See also Robert C Beckman, “Divergent Developments of the Common Law in Jurisdictions Which Retain Appeals to the Privy Council” (1987) 29 Malaya L Rev 254.
- 28 Application of English Law Act (Cap 7A, 1993 Rev Ed).

(2) *The Application of English Law Act 1993*

13 Indeed, the second period of reception, which arguably supersedes the first period, came with the passage of the AELA,<sup>29</sup> a watershed moment in Singapore law. The AELA seeks to clarify the position of English law in Singapore.<sup>30</sup> The then Minister for Law, Professor S Jayakumar, announced its purpose as being to “clarif[y] the application of English law, particularly English statutes, as part of the law of Singapore and remove the considerable uncertainty that currently exists in this regard”.<sup>31</sup> He also highlighted that the AELA “is one of the most significant law reform measures since [Singapore’s] independence”.<sup>32</sup> Indeed, the first part of the Preamble states that the AELA is “to declare the extent to which English law is applicable in Singapore and for purposes connected therewith”.<sup>33</sup>

14 For present purposes, however, our concern is primarily with the reception of English common law in Singapore. In this regard, s 3 of the AELA<sup>34</sup> means that the common law of England, so far as it was part of the law of Singapore immediately before the commencement of this Act, shall continue to be the law of Singapore, subject to such modifications as applicable to the circumstances of Singapore and its inhabitants.<sup>35</sup> Leaving aside the theoretical problems that persist, the

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29 Application of English Law Act (Cap 7A, 1993 Rev Ed).

30 It was passed on 12 November 1993.

31 *Parliamentary Debates Singapore, Official Report* (12 October 1993) vol 61 at col 609.

32 *Parliamentary Debates Singapore, Official Report* (12 October 1993) vol 61 at col 609.

33 While the aims of the Application of English Law Act (Cap 7A, 1993 Rev Ed) (“AELA”) were lofty, in truth, it did not resolve all of the matters relating to the reception of English law in Singapore. See Andrew Phang, “Cementing the Foundations: The Singapore Application of English Law Act 1993” (1994) 28 UBC LR 205 at 217–244. Indeed, as for legislation, Phang views it as unfortunate that the AELA chose to list the English statutes which would still be applicable in Singapore, rather than to re-enact them again in the local context. He argues that it would not be too difficult to do this in view of the limited number of statutes actually listed in the AELA. He further states that re-enactment of the statutes in the local context would be more consistent with the status of the independence of Singapore and its legal system. One is most inclined to agree with Phang. However, might it be said that the main purpose of the AELA was to introduce certainty into the applicability of English law in Singapore, and by listing the statutes applicable in Singapore, that purpose has certainly been achieved? While the independence of the Singapore legal system is no less important, the main issue of certainty ought to be addressed first, and the quickest means of doing that was to list out all the statutes still applicable in Singapore. Local re-enactment of the statutes can come later when the main purpose of the AELA has been achieved and the status of the applicability of English law in Singapore becomes clearer with time.

34 Application of English Law Act (Cap 7A, 1993 Rev Ed).

35 For completeness, s 3 of the Application of English Law Act (Cap 7A, 1993 Rev Ed) provides as follows:

(cont’d on the next page)

practical effect of this section is that, even where English common law was received, the Singapore courts retained the residual power to depart from such law if the local conditions require such a departure.<sup>36</sup> This continues with the “exception” recognised even prior to the passage of the AELA following the decision in *Regina v Willans*:<sup>37</sup> any application of English law before the AELA would have to be made *voluntarily* by the courts, if it is thought to be appropriate.<sup>38</sup> Thus, in this sense, s 3 of the AELA actually encourages the development of an independent Singapore legal system in which the courts have the power to reject or accept law originating from elsewhere.<sup>39</sup>

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Application of common law and equity.

3. —(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 12th November 1993, shall continue to be part of the law of Singapore.

(2) The common law shall continue 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.

It has been speculated that the probable source of s 3 is s 5 of the New Zealand Imperial Laws Application Act 1988 (Act No 112 of 1988): see Andrew Phang, “Cementing the Foundations: The Singapore Application of English Law Act 1993” (1994) 28 UBC LR 205 at 229.

36 Unfortunately, this does not clarify the position with regard to post-1826 common law in Singapore. In other words, while the Application of English Law Act (Cap 7A, 1993 Rev Ed) (“AELA”) provides that the common law of England shall “continue” to be part of the law of Singapore before the enactment of the AELA, it does not say what the *content* of this body of law is: is it the English common law received as at 1826 (the time the Second Charter of Justice was received), 1993 (the time of the enactment of the AELA), or some other time (resting on the possible Blackstonian argument that the common law is “timeless” and hence no “cut-off” date is feasible)? While theoretically an interesting question to consider, the result is of no practical moment for our purposes. Whether the English common law received was as of 1826 or 1993, the courts have always retained for themselves the ability to make modifications to the received (or voluntarily followed) law so as to take into consideration the local conditions and customs. See Andrew Phang, “Cementing the Foundations: The Singapore Application of English Law Act 1993” (1994) 28 UBC LR 205 at 234–239.

37 (1858) 3 Kyshe 16.

38 See Andrew Phang, “Cementing the Foundations: The Singapore Application of English Law Act 1993” (1994) 28 UBC LR 205 at 249–252.

39 In the final analysis, the Application of English Law Act (Cap 7A, 1993 Rev Ed) (“AELA”) is undoubtedly an important statute as it clarifies the status of applicability of English law in Singapore. By providing a firm foundation of rules from which to start from, the AELA has provided the legal profession in Singapore with much clarity amidst the conceptual uncertainty prior to its passage. The platform for the Singapore legal system to become a truly independent one was indeed set with the AELA, and the merit of its passage is to be seen in more recent times.

## B. *The project to develop Singapore law*

15 Against this backdrop, it is perhaps unsurprising that the project to develop Singapore law is one that has taken shape in incremental steps. Indeed, the initial first step in that direction might be attributed to the Second Charter,<sup>40</sup> which established the Singapore legal system and required that application of the common law would be received only “so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require”.<sup>41</sup> It has also been astutely pointed out that several of our legislation enacted very soon after Singapore’s independence (such as the Internal Security Act<sup>42</sup> or the Misuse of Drugs Act<sup>43</sup>) finds little parallel with those of other jurisdictions.<sup>44</sup>

16 By and large, however, the transformative potential of the Second Charter<sup>45</sup> was more discussed in academic writing than seriously tapped into to develop an autochthonous Singapore legal system.<sup>46</sup> Notwithstanding the statutory permission to take local conditions into consideration, the courts in the best part of the last century all but accepted English decisions almost uniformly. While it has been noted that the earliest opinions favoured giving the local population the full benefit of their own laws, religions and customs,<sup>47</sup> such modifications were later rarely forthcoming, especially in land law and commercial law, where the greater commercial interests of the British empire (as given effect to by a uniform application of English law) prevailed.<sup>48</sup> The only area where such modifications existed was in personal laws.<sup>49</sup>

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40 Second Charter of Justice of 1826.

41 The Second Charter of 1826, s 3(2).

42 Cap 143, 1985 Rev Ed.

43 Cap 185, 2008 Rev Ed.

44 Singapore’s criminal jurisprudence has largely been driven by the philosophy of “crime control” (see Chan Sek Keong, “The Criminal Process – The Singapore Model” [1996] *Sing L Rev* 13). This is no doubt primarily due to the conviction of Singapore’s leadership that a secure, safe and corruption-free society is essential to the economic success of the country as well. For a conspectus of the development of Singapore’s criminal law, see Andrew Phang Boon Leong, *The Development of Singapore Law – Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990) ch 3.

45 Second Charter of Justice 1826.

46 An excellent example of such academic scholarship may be found in Andrew Phang Boon Leong, *From Foundation to Legacy: The Second Charter of Justice* (Academy Publishing, 2006).

47 Helena H M Chan, *An Introduction to the Singapore Legal System* (Singapore: Malayan Law Journal, 1986) at p 8.

48 Helena H M Chan, *An Introduction to the Singapore Legal System* (Singapore: Malayan Law Journal, 1986) at pp 9–10.

49 These general observations are given real effect when one considers the actual numbers of English cases cited as authority in the local decisions. In a study of the 527 Singapore High Court decisions reported locally between 1965 and 1985, it was  
(cont’d on the next page)

Moreover, the continued vitality of English law was sustained by the now infamous s 5 of the Civil Law Act,<sup>50</sup> which provided for the continued reception of English law in mercantile or commercial matters. This, coupled with the fact that decisions of Singapore's Court of Appeal (or Court of Criminal Appeal prior to 1993) were subject to review by the Judicial Committee of the Privy Council, posed as institutional barriers to developing a fully-fledged Singaporean jurisprudence.<sup>51</sup>

17 The 1990s were undoubtedly a watershed in the development of Singapore law. As already mentioned, by far the most obvious developments were the enactment of the AELA,<sup>52</sup> which was followed soon after by the abolition of appeals to the Privy Council and the issuance of a practice statement that while respect would be paid to existing precedents, Singapore's highest court was now free to depart from the decisions of the Privy Council.<sup>53</sup> In one fell swoop, the major institutional barriers to the development of an autochthonous jurisprudence had been irrevocably displaced. Although some thought

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noted that 1,383 cases were cited as authorities. Of these 1,383 cited cases, 329 were local, whereas 923 were English. In percentage terms, 66.7% of the cases cited were English cases, 27.1% were local cases and a mere 9.5% were cases from other jurisdictions. Over the same period, 297 decisions of the appellate courts were reported. In these decisions, 603 cases were cited as authorities and of these, the breakdown is as follows: 105 local cases (17.4%), 427 English cases (70.8%) and 71 cases from other jurisdictions (11.8%): see Walter Woon, "The Applicability of English Law in Singapore", in *The Singapore Legal System* (Kevin Y L Tan ed) (Singapore University Press, 2nd Ed, 1999) at p 230.

50 Cap 43, 1999 Rev Ed.

51 Professor Robert Beckman's article, "Divergent development of the common law in jurisdictions which retain appeals to the Privy Council" (1987) 29 Mal LR 254 provides a detailed study of the difficulties that common law jurisdictions, which retained appeals to the Privy Council, faced in attempting to develop jurisprudence different from the English. However, see also John Koh, *The First Chief* (Academy Publishing, 2010) at p 88, in which he recounts the pragmatic reasons the Singapore government had in retaining appeals to the Privy Council until the 1990s. Indeed, Koh writes that "[r]ecognising that foreign capital came, with the exception of Japan, mostly from foreign colonial nations, appeals to the Privy Council in London were preserved".

52 Application of English Law Act (Cap 7A, Rev Ed 1994) ("AELA"). The key contribution to the AELA was the abolition of s 5 of the Civil Law Act (via s 6(1) of the AELA), putting an end to the "continuing reception" of English mercantile law under that section. The AELA did not, however, seek to dramatically upset existing law. Section 3(1) of the AELA retained the English common law as it had become part of Singapore law prior to the commencement of the AELA, although s 3(2) provided an ability for the Singapore courts to modify English common law to the extent local conditions required such modification. The AELA then sought to clarify ambiguity relating to the English legislation that was applicable to Singapore by virtue of s 5 of the Civil Law Act by setting out the legislation that did apply. See further, Victor Yeo, "Application of English Law Act 1993: A Step in the Weaning Process" *Asia Business Law Review*, No 4 (April 1994) at 69.

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

that the AELA might only have clarified the extent to which English statute law continued to apply in Singapore and harboured doubts as to whether the AELA did enough to divorce Singapore from English common law,<sup>54</sup> it was clear that the Judiciary understood these developments as ushering in a new era in which it was now free to develop Singapore law as it saw fit. The practice statement, for example, articulated in no uncertain terms that:<sup>55</sup>

... the political, social and economic circumstances of Singapore have changed enormously since Singapore became an independent and sovereign republic. The development of our law should reflect these changes and the fundamental values of Singapore society.

18 Similarly, in an extrajudicial comment, the former Chief Justice Yong Pung How remarked that:<sup>56</sup>

There has been a realisation over these years that Singapore has to develop its own responses to its own legal problems; Singapore has to develop a legal system that is autochthonous, that grows out of its own soil.

19 Apart from unfettering the Singapore courts from the institutional barriers to developing a local jurisprudence, other subtle but equally important steps were being taken in furtherance of this goal.

20 First, Singapore published its own law reports for the first time in 1992. Until then, Singapore had relied on the largess of the Malayan Law Reports, which published only a few judgments of the Singapore courts that had been selected by the Registrar of the Supreme Court. Although *The Straits Times* had also covered certain legal proceedings, such legal reporting simply did not hold the same precedential value as its London counterpart.<sup>57</sup>

21 Second, also for the first time, there was a concerted effort to establish a fully-searchable and widely accessible online database of local decisions, both of the Subordinate Courts and the Supreme Court. The name given to this ground-breaking feat was LawNet. As the courts in which the vast majority of Singaporeans commence action, or are sued or prosecuted, the Subordinate Courts hold a wealth of valuable guidance and legal precedent that might otherwise have been lost

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54 Victor Yeo, "Application of English Law Act 1993: A Step in the Weaning Process" *Asia Business Law Review*, No 4 (April 1994) at 69.

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

56 See "Speech delivered at the Singapore Academy of Law Second Annual Lecture – 12 September 1995" in *Speeches and Judgments of Chief Justice Yong Pung How* (FT Law & Tax Asia Pacific, Singapore, 1996) at pp 193–194.

57 Lau Kok Keng *et al*, "Legal Crossroads – Towards a Singaporean Jurisprudence" (1987) 8 *Sing L Rev* 1 at 14–15.

without this initiative.<sup>58</sup> Being able to conduct research of the decisions of the Subordinate Courts and the Supreme Court online benefits both local lawyers who are able to search for cases on specific issues more easily, and also foreign lawyers who might otherwise have little or no access to Singapore judgments. What we take for granted today is the culmination of incalculable hours of compilation and coding. It is perhaps a testament to the success of LawNet that the National University of Singapore Faculty of Law's website carries a reminder to its students of the importance of logging off LawNet.<sup>59</sup>

22 These developments, among many others,<sup>60</sup> have been critical in pushing the development of local jurisprudence past its infancy.<sup>61</sup> So much so that in 2008, the present Chief Justice Chan Sek Keong issued a practice direction, which directed that "where there are in existence local judgments which are directly relevant to the issue, such judgments should be cited in precedence to foreign judgments"<sup>62</sup> so that the courts are not "unnecessarily burdened with judgments made in jurisdictions

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58 The authors are unaware of any decisions of the Subordinate Courts that have been reported in the Singapore Law Reports, making their availability online even more critical. Even though one may expect novel cases to reach the Supreme Court, this represents only a fraction of the cases heard by the Subordinate Courts. Publications such as the Subordinate Courts' Practitioner Series on sentencing guidelines and assessment of damages are illustrations of the importance and usefulness of making available judgments of the Subordinate Courts.

59 National University of Singapore Faculty of Law website <<http://law.nus.edu.sg>> (accessed 1 September 2010).

60 The reform of the Singapore Legal Service and the Judiciary, were foremost priorities of Yong CJ's tenure as Chief Justice. This included individualised training maps for Subordinate Court judges, the simultaneous enlargement and strengthening of the High Court to clear the backlog as well as handle complex trials and proceedings through the appointment of judicial commissioners and experienced practitioners and noted academics, and the recruitment of law clerks who assisted the Supreme Court judges in their research. These reforms have also been instrumental to developing Singapore law.

61 In their article, "Legal Crossroads – Towards a Singaporean Jurisprudence" (1987) 8 Sing L Rev 1, the authors identified a number of features of the Singapore legal system which they believed contributed to the difficulty in developing a Singaporean jurisprudence. In brief, they were: (a) the continuing reception of English common law; (b) the training of the legal profession; (c) a dearth of local legal research tools and legal textbooks; (d) the retention of the Privy Council as the final appellate court; (e) extremely brief judgments; (f) the lack of a local law report or legal reporting system; (g) the lack of publication of Subordinate Court judgments; (h) the failure to report on counsel's arguments in the law reports. As outlined above, many of the developments that have taken place particularly since the 1990s have gone towards addressing these obstacles to developing a Singaporean jurisprudence. We will return to these points at the appropriate juncture.

62 Practice Direction 1 of 2008, available at <<http://supremecourt.gov.sg>> (accessed 24 February 2009).

with differing legal, social or economic contexts”.<sup>63</sup> If foreign judgments are to be cited, counsel should ensure that they “will be of assistance to the development of local jurisprudence on the particular issue in question”.<sup>64</sup> This Practice Direction comes after a series of promptings by Chan CJ that Singapore should develop the sophistication of its own jurisprudence and that this can only be done if Singapore lawyers and academics “write Singapore”.<sup>65</sup>

23 Implicit in this urging is the recognition that the project to develop Singapore law had at least achieved a sufficient degree of success that one should not naturally feel the need to turn to English law as a first resort.<sup>66</sup> This recent exhortation to develop Singapore law, however, is not only motivated by or the product of the earlier movement to develop Singapore law as an intellectual pursuit in its own right or even to ensure that the laws of Singapore are suitably adapted to the needs of a uniquely multiracial, multiethnic, multi-religious and multilingual society.<sup>67</sup> Instead, the latest call to develop a sophisticated jurisprudence is being driven by a government-backed, judiciary-led effort to raise Singapore’s profile as the region’s leading centre for legal services, both in transactional work and dispute resolution. A large part of fulfilling this ambition is seen to be the promotion of Singapore law as the *lex mercatoria* of the region.<sup>68</sup> As Chan CJ noted in his welcome reference:<sup>69</sup>

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63 Practice Direction 1 of 2008, available at <<http://supremecourt.gov.sg>> (accessed 24 February 2009).

64 Practice Direction 1 of 2008, available at <<http://supremecourt.gov.sg>> (accessed 24 February 2009).

65 See, Janice Heng, “Cite local court rulings first: CJ urges lawyers; other cases can be used for comparison or criticism” *The Business Times* (19 May 2007). Melissa Sim, “Write on local law, CJ tells academics” *The Sunday Times* (2 September 2007); Chan Sek Keong CJ at his welcome reference on 22 April 2006, available at <<http://supremecourt.gov.sg>> (accessed 24 February 2009).

66 Indeed, it has long been suggested that even where a local decision merely paraphrases an English decision, the former should be cited in preference to the latter: see Andrew Phang Boon Leong, “Reception of English Law in Singapore: Problems and Proposed Solutions” (1990) 2 SAclJ 20 at 25.

67 Or indeed the physical constraints of space: see Goh Yihan, “Tort Law in the Face of Land Scarcity in Singapore” (2009) 26(2) *Arizona J Int & Comp L* 335.

68 See generally *Full report of the Committee to develop Singapore legal sector* <[http://notes.app.internet.gov.sg/\\_48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/\\$file/Justice%20V%20K%20Rajah%20report.pdf](http://notes.app.internet.gov.sg/_48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/$file/Justice%20V%20K%20Rajah%20report.pdf)> (accessed 19 March 2009).

69 See the speech delivered by Chan CJ at his welcome reference on 22 April 2006, available at <<http://www.supcourt.gov.sg>> (accessed 30 August 2019) at paras 19, 21. The Singapore Academy of Law now has a standing committee dedicated to this effort, *ie*, the International Promotion of Singapore Law Committee, which is chaired by V K Rajah JA. The Academy also runs two websites, Singapore Law (<<http://singaporelaw.sg>>), which provides an overview of the commercial laws of Singapore, and Singapore Law Watch (<<http://singaporelawwatch.sg>>) which provides daily updates of the latest law-related news as well as judgments of the Supreme Court.

The quality of our laws, especially our commercial laws, written and unwritten, and the existence of an independent and competent legal profession are other factors that have contributed to the inflow of foreign investments to Singapore ... The Judiciary will play its part in developing the principles of commercial law.

24 This outlook certainly has had, and will have, implications for how Singapore's jurisprudence is developed by the Judiciary, a point to which we will return.<sup>70</sup> In fact, quite apart from the known qualities of our strong commercial bench and bar and other incentives to locate disputes in Singapore, Singapore has a real window of opportunity to be innovative leaders of the common law. As English law continues to be influenced by the laws of the European Community and the jurisprudence of the European Court of Justice, which would be alien to other common law jurisdictions, Singapore's jurisprudence is free to develop in tandem with the best practices of the international community.

25 Singapore is at an important milestone of the trajectory of the development of its jurisprudence. The passage of Practice Direction 1 of 2008, though not possessing as honorific a title as the Second Charter, should be seen as part of continuing efforts to develop a sophisticated and an autochthonous Singapore legal system. The present article (and those that will follow) now seeks to examine just how far we have moved towards this aim and the influences that have shaped that development.

26 It is appropriate now to turn to the present project proper.

#### IV. Broad outline of the study and methodology used

27 In this part of the article, the broad outline of the study, as well as the methodology used, is set out. As already mentioned, there are three broad aspects of the study. The general purposes of these three broad aspects, as well as the *specific* methodology employed in each aspect, will be elaborated on. After this, the more general methodology employed in the study, which is applicable to all three broad aspects, will be discussed. These concern, for example, the range of years studied, the explanation why certain criteria were chosen across all three broad aspects, as well as the manner in which the data was collected.

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70 See the observations in Paul Tan, "Writing a Persuasive Appellate Brief" (2007) 19 SAclJ 337 at 353–354, paras 30–32.

### A. *Three broad aspects of the study*

#### (1) *“Internal” analysis of the development of Singapore law*

28 As outlined above, the first aspect of the study, and the one which this article focuses on, is the exploration of the development of Singapore jurisprudence “internally”. There are four specific areas of concentration.

- (a) The growth and independence of local jurisprudence: The extent to which Singapore courts are citing local case law as opposed to foreign law

29 The first specific area of concentration is the growth and development of local jurisprudence. In this regard, the development of local jurisprudence is a new direction taken by the Singapore legal system. While this is a movement urged several decades ago,<sup>71</sup> it has only very recently seen concrete motion.<sup>72</sup> Indeed, as already noted,<sup>73</sup> it is rather significant that the Supreme Court recently put out a Practice Direction which mandates lawyers to cite a Singapore case whenever possible, *before* making reference to foreign cases.<sup>74</sup> This necessarily presupposes that there is now a sizeable body of Singapore case law from which to cite, and this is in contradistinction with the study done of the Singapore cases decided between 1965 and 1985, where there was a heavy dependence on English decisions. But the development of

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71 One of the very first advocates of the development of an autochthonous Singapore legal system was G W Bartholomew, former Dean of the Faculty of Law at the National University of Singapore. In an interview given in 1985, he stated that it was only a “question of time” before Singapore could have an autochthonous legal system, given its relatively young age: “In Conversation: Prof G W Bartholomew” (1985) 6 Sing L Rev 56.

72 Indeed, most recently, the Singapore Court of Appeal in *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 at [133] stated that: “[L]ocal courts must simultaneously recognise that the days of a uniform common law are no longer a given. It is true that in the commercial context, there is more likelihood of (and desirability for) uniformity. However, even in the commercial setting, uniformity should not be taken too far.” The court then turned to s 3(2) of the Application of English Law Act (Cap 7A, Rev Ed 1994), of which, as discussed above, allowed the courts to depart from English law where necessary.

73 See para 22 of this article.

74 Singapore Supreme Court Practice Direction No 1 of 2008 (13 June 2008). Specifically, para 4 of the Practice Direction No 1 of 2008 provides that: “Judgments from other jurisdictions can, if judiciously used, provide valuable assistance to the Court. However, where there are in existence local judgments which are directly relevant to the issue, such judgments should be cited in precedence to foreign judgments. Relevant local judgments will be accorded greater weight than judgments from foreign jurisdictions. This will ensure that the Courts are not unnecessarily burdened with judgments made in jurisdictions with differing legal, social or economic contexts.”

Singapore law is a more holistic appraisal than whether or not local decisions are being cited. On questions where the local position remains uncertain or undefined, resort to foreign decisions is not only necessary, it is perhaps advisable. Indeed, even where the local position is settled, it is always helpful to test them by reference to developments overseas. This part of the study is therefore an attempt to better appreciate the influences that shape the decisions of the High Court and the Court of Appeal; the sources of foreign law; whether there is a difference in the extent to which the High Court and the Court of Appeal refer to foreign cases;<sup>75</sup> and the extent to which foreign decisions are simply cited, as opposed to being followed, distinguished or not followed at all. As already mentioned, this phase of the study is concerned mainly with empirical data. A more qualitative evaluation of what these numbers mean, as well as possible theories of the practice of the judicial institutions, etc, will be undertaken at a later stage.

30 The way the study was conducted is as follows. First, the decisions of first instance and appellate decisions were categorised as follows:

- (a) Administrative and constitutional.
- (b) Admiralty and shipping.
- (c) Arbitration.
- (d) Civil procedure (including evidence in civil cases).
- (e) Commercial (aside from the usual cases involving contract law, company law and banking law, this category also includes cases involving intellectual property, tenancy disputes, securities, bankruptcy and insolvency, trusts, partnerships and insurance).
- (f) Criminal law and sentencing (including criminal procedure and evidence).
- (g) Family and probate.
- (h) Private international law (including some, but very few, cases of public international law).

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75 One possible explanation may be that the High Court, bound by the decisions of the Court of Appeal, may not feel it necessary or desirable to cite foreign decisions when an issue has already been decided by the Court of Appeal. The Court of Appeal, on the other hand, which carries the primary responsibility to develop the law and is not bound by *stare decisis*, may not and perhaps ought not to be similarly constrained. However, as would be appreciated, these are hypotheses at this point. The main aim of this article is to present the observable empirical data and to provide some *preliminary* views only. A more detailed (and “qualitative”) explanation will be provided at a later time.

- (i) Profession-related cases (including professional negligence and discipline).
- (j) Property law (*ie*, land law cases).
- (k) Revenue.
- (l) Tort.

31 For the first instance decisions, the number of foreign decisions cited *per* judgment with the number of local decisions cited were compiled. Two main areas were of interest:

- (a) Number of foreign decisions cited *per* judgment from the following jurisdictions: (i) Australia, (ii) Canada, (iii) New Zealand, (iv) India, (v) Malaysia, (vi) Hong Kong, (vii) the UK, (viii) the US and (ix) Others.
- (b) Number of local decisions cited *per* judgment.

And to (a) and (b), the nature of citation was further classified, *ie*, followed, referred, distinguished and not followed.

32 The same was repeated for appellate decisions, including decisions from the Singapore Court of Appeal, the Singapore Criminal Court of Appeal, the Malaysian Federal Court (where relevant) and the Privy Council. Again, in relation to these cases, the nature of citation was investigated, *ie*, followed, referred, distinguished and not followed.

33 Then, from the nature of citation, it was sought to identify patterns in how the local courts have been using (and not merely citing) foreign and local cases, according to jurisdiction and subject area. As the presentation of the data below will show, the potential to conduct a very detailed analysis of these numbers is very real. For example, it is possible to investigate how Singapore courts have followed a particular jurisdiction's case law (and in what particular manner) in a particular subject area.

(b) The nature of local judicial law-making

34 The next specific aspect is the nature of local judicial law-making. One of the ways that the courts develop the law is not only by deciding each case on its facts but by making observations on points of law that may have arisen but did not, or which similar cases such as the one confronting the court may raise in the future. Our study seeks to investigate whether our courts are minimalists or theoretically ambitious;<sup>76</sup> whether the distinction between *ratio* and *obiter* is becoming

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76 Cass Sunstein, *One Case at a Time* (Harvard University Press, 1999).

elusive; and the willingness of the appellate courts to intervene in the exercise of discretion by the lower courts and if so on what grounds; as well as the justifications and explanations that may be offered for these trends.

(c) The reliance on academic arguments

35 The next specific aspect is the courts' reliance on academic arguments. Although academic treatment of the law is probably still regarded as "secondary" authority, anecdotal evidence suggests that the old warning that they should only be cited sparingly or with caution quite clearly no longer holds true.<sup>77</sup> The aim of this part of the study is to ascertain with some precision how frequently academic texts are cited by the courts, and what kinds of academic texts are being cited.

36 The way the study was conducted is as follows. The academic materials referred to by the court in each judgment were looked at. Here, a very broad definition to academic materials was adopted, including not only the usual academic textbooks and articles, but also newspaper articles, dictionaries and so forth. The purpose is to see how much the courts are relying on "non-judicial" materials. However, for the most part, the data still shows the courts' reliance on what is traditionally regarded as academic materials.

(d) The nature of local academic writing

37 Finally, we will explore the nature of local academic writing. Academic treatment of the law has not only always been important, it is receiving greater prominence in local judgments. Consistent with this, Chan CJ has urged local academics to write on Singapore law. This study aims to understand the extent to which local academics are writing – or not writing – on Singapore law; and what may explain the trends.

(2) *"External" analysis of Singapore law: The exportation of Singapore law*

38 Secondly, this study aims to investigate how well received Singapore law is as a possible indication of the extent to which Singapore has the potential to be the *lex mercatoria* of the region. An attempt is made to engage this question by looking at the number of our local decisions which have been cited or followed in major jurisdictions;

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77 Paul Tan, "Writing a Persuasive Appellate Brief" (2007) 19 SAclJ 337 at 353, para 30. Indeed, it has been noted that Wee Chong Jin CJ "had no time and no use for academic writings and he never, literally, went near an academic". See Chan Sek Keong CJ, "Foreword" in *The First Chief* (John Koh) (Academy Publishing, 2010) at p viii.

as well as the regularity with which they have been cited or commented on in foreign journals.

39 The scope of this analysis is as follows:

- (a) Judicial decisions
  - (i) foreign decisions citing local decisions – and the areas of the law in which they do so.
- (b) Academic commentaries
  - (i) articles in local journals by foreign authors on Singapore law;
  - (ii) articles in foreign journals by local authors;
    - (A) on local law (including comparative),
    - (B) on foreign law;
  - (iii) articles in foreign journals by foreign authors on Singapore law; and
  - (iv) foreign textbooks citing local cases/articles.

#### **B. General matters**

40 The above thus sets the scope of this study. It is clear that any study of this nature necessarily involves the making of certain methodological decisions and assumptions. In order that the study can be appreciated in the right light (and appropriate scepticism), the methodological decisions and assumptions which have been made in this study are set out.

##### *(1) Range of years*

41 It was necessary to select the range of years for the study. It was chosen to focus on cases *reported* between 1965 and 2008, both years inclusive. Research into the 2009 and 2010 cases are currently ongoing. There are two components to this decision: the range of years collected, as well as the restriction to cases *reported* only. Several reasons inform this decision.

42 First, it was necessary to keep the data studied manageable but, at the same time, meaningful. It would have been interesting to look at all cases decided since the Second Charter<sup>78</sup> was passed, but the complexities of the court system of the Straits Settlements, as well as the scarcity (or incompleteness) of case reports of that era presented

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78 Second Charter of Justice of 1826.

formidable obstacles. But more importantly, the sheer number of cases decided from 1826 (assuming that these cases can all be found) would have made the study difficult and perhaps unnecessarily so. Given that one of the aims of this study is to look at Singapore law post-independence, the study of cases prior to 1965 would only be of historical interest. 1965 was thus chosen as the “cut-off” date for the study. It is of course acknowledged that 1965, while representing our nation’s independence, does not represent our judicial independence, since our apex court (“locally” at least) was the Federal Court of Malaysia until sometime after 1965.<sup>79</sup> None the less, 1965 was decided on because of the national significance of the date. Indeed, for the most part, the Singapore judiciary was largely independent by 1965, or at least regarded as such.

43 Second, only *reported* cases were chosen because the Singapore Law Reports (“SLR”) provide the most reliable and consistent reports of local cases. Although unreported cases are now available on LawNet, part of the study requires a consistent manner in which certain data (for example, number of pages, *etc*) are calculated, and unreported cases simply do not provide that level of consistency. Moreover, reported cases perhaps provide more significant influence on our local jurisprudence.

(2) *Date of decision, not date reported*

44 The next decision that had to be taken was how to present the data. Specifically, should the data be represented in terms of the SLR volume in which a particular case appeared, or the year in which the case was actually decided?

45 For historical accuracy, the latter was decided on. Several reasons informed this decision. First, there is a publication lag between the date a case was actually decided and the date it was eventually reported. Usually, the lag is about three to six months. However, in certain rare instances, there has been a lag-time of several years. This is due partly to the fact that the decision whether or not to report a case is one independent of time considerations. By that it is meant that the *publication* decision to report a case could be taken some time after it was actually decided, although, of course, the further back in time a case was decided, the less likely it would be reported as a matter of publication interest. Hence, because it was intended to correlate the statistics derived from a study of the cases to historical events, it was

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79 The final legal break from Malaysia was to come on 9 January 1970, when the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) which established a Singapore Supreme Court was enacted. Prior to that, appeals from the Singapore High Court were still heard by a (Malaysian) Federal Court sitting in Singapore.

decided that the cases would be presented in terms of year of decision, as opposed to the volume of the SLR in which the case appeared.

(3) *Distinction between SLR(R) and SLR pages and other data*

46 In the course of this study, the new Singapore Law Reports (Reissue) was published. Instead of being known as the “SLR”, they are now known as the “SLR(R)”. But more than just a name change, this has some implications for this project, chief amongst which concerned the number of pages of each case.

47 Part of the study involved noting the number of pages of each case. The purpose of this is to investigate whether cases have been getting longer (or shorter) and to suggest implications of this. The SLR(R) reports do not usually contain the same number of pages for the same case reported in the SLR.

48 As by the time the SLR(R) series was published most of the data from the SLR series had already been collected, a conscious decision was made *not* to re-collect the number of pages for each case from the new SLR(R) series. The point of investigating the number of pages is a *comparative* one. That is, the intention was to compare the length of cases *across* different periods. Accordingly, being a comparative exercise, so long as we have a consistent basis of comparison (*ie*, either SLR or SLR(R)), its purpose will still be satisfied. As such, the number of pages from the SLR series was retained.

49 Another implication of the new SLR(R) series was that there are some additional cases which are reported in the SLR(R) series which may not have been reported in the SLR series, and *vice versa*. Again, as the study had started with the SLR series, it was decided to keep with that series as the difference is not very great to begin with.

50 For completeness, it should be mentioned that most of the data from 1965 to 2008 were derived exclusively from the SLR series, and not the SLR(R) series. However, this should not distort the factual data by any noticeable extent. Since 2010, however, there is now a consolidated set of Singapore Law Reports.

(4) *How the data was categorised*

51 The next decision is perhaps the most critical, and calibrates the appropriate understanding of the results. As alluded to above, the data collected were categorised according to different subject matters. The data was broken down in this way in order to see if there were patterns of development unique to any particular subject matter. In doing so, it was necessary to balance the categories chosen with the feasibility of

maintaining a large number of more specific categories. This led to the 12 categories outlined above. They may not be the most satisfactory, in that certain categories may seem too “broad”, thereby making a more specific study into a particular area of law difficult. However, as already mentioned, in the interests of practicality and not losing the broader aims of the study, it was decided to go with these categories. The reasons for doing so, it is hoped, will help calibrate the understanding of the project.

52 In a related vein, the issue of categorisation also raised one of the biggest challenges faced – avoiding double-counting, particularly in cases which were concerned with two or more different subject matter. After considering various options, it was decided to adopt a broad-brush approach of determining what in the authors’ view the primary holding of the case was. In the vast majority of cases, there was little difficulty in making this assessment, guided by the balance of the arguments and the reasoning of the court as well as the proposition of law for which the particular case has subsequently been cited. It was only in a very few cases that a fine judgment call had to be made.

53 With this background information considered, we will now turn to a presentation of the preliminary findings.

## V. Brief summary of results

54 A brief summary of the results of the research will now be set out. The aim of this section is modest – it is to set out a thumbnail sketch of the findings and to offer a few *preliminary* observations and remarks. A more detailed explanation of the data, as well as linkage of the observable trends to historical and theoretical perspectives, will be offered in the future. The purpose of the results as presented below is only to provide a *sampling* of the results obtained.

### A. Number of reported cases

55 The first indicium is the number of reported cases. The chart below represents the total number of cases decided in a particular year over the years since 1965. As mentioned earlier, these represent only the reported cases, although the point of reference is not when they were reported, but when they were decided.

56 In many ways, the chart speaks for itself. It is obvious that both in the High Court and the Court of Appeal, the number of reported cases has seen a general rise over the years, though there has been a gradual decline in recent years.

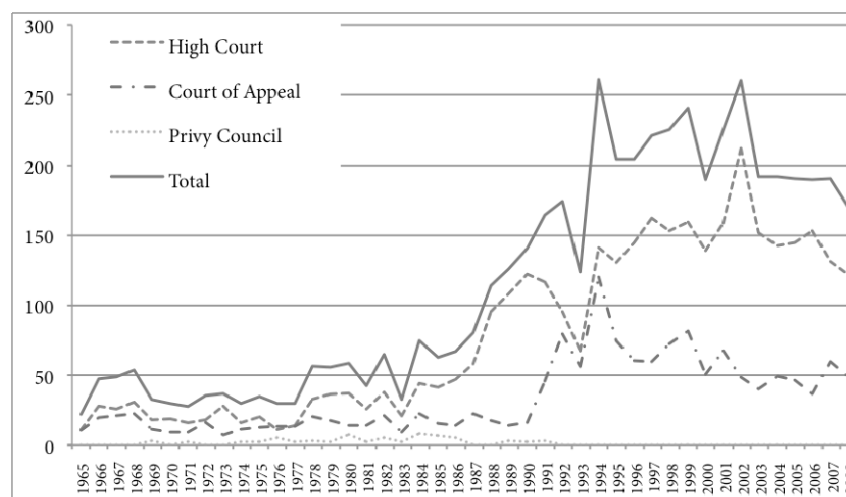


Chart A-1: Total number of cases reported from 1965–2008

57 The rise in the number of reported cases first began in the early 1990s. This is probably attributable to a confluence of a number of factors. First, it is well known that when Yong Pung How CJ took office as the Chief Justice on 28 September 1990, he made it a priority to enlarge the High Court bench in order to clear the backlog of cases. At the time Yong CJ took office, there were seven serving High Court judges who had been appointed under the leadership of Wee Chong Jin CJ.<sup>80</sup> As has been noted, this was a major problem which Wee CJ faced: there was a paucity of judges from the Bar. And this was a deficiency which was not within Wee CJ's power<sup>81</sup> to resolve as private practice was vastly lucrative and provided a more attractive lifestyle.<sup>82</sup> Thus, "the machinery of justice was already in the slow lane for many years".<sup>83</sup> Indeed, the number of judges did not exceed eight until 1987 when a series of salary increases enabled the Judiciary to attract top lawyers from the Bar.<sup>84</sup> The already short-handed Bench was not helped

80 These were: Chan Sek Keong J (as he then was), F A Chua J, T S Sinnathuray J, Lai Kew Chai J, L P Thean J (as he then was), Punch Coomaraswamy J and Chao Hick Tin J (as he then was). See *Halls of Justice* (Supreme Court, 2006) at p 42.

81 Indeed, Wee Chong Jin CJ had in as early as 1969 called for lawyers to step forward to serve, but recognised the difficulty of doing so. It was only in January 1973 that the public purse could afford pay rises for its judges: see John Koh, *The First Chief* (Academy Publishing, 2010) at p 147.

82 It was only in the 1980s that the best legal minds of the profession became attracted to the Bench. Such individuals included the late Lai Kew Chai J, L P Thean, J Grimberg and, indeed, the current Chief Justice, Chan Sek Keong, who was then a leading commercial lawyer: see John Koh, *The First Chief* (Academy Publishing, 2010) at p 150.

83 Chan Sek Keong CJ, "Foreword" in *The First Chief* (John Koh) (Academy Publishing, 2010) at p x.

84 John Koh, *The First Chief* (Academy Publishing, 2010) at comments to picture entitled "Men in Wigs", after p 98.

by the increasing workload: in the first half of the 1980s, there was a 160% increase in the number of High Court writs from 4,998 in 1981 to 13,109 in 1985. This was, however, reduced to 6,100 in 1986 through the alteration of the Subordinate Courts' civil jurisdiction.<sup>85</sup> It was clear that the early 1990s heralded a series of reforms in the Judiciary which was to lead to an increase in its case output. For example, the number of judges elevated to the High Court bench in the year immediately after Yong CJ took office increased significantly from 12 in 1990 to 20 in 1991, thus increasing the productivity of the Supreme Court.

58 Second, in 1992, the Singapore Law Reports was born,<sup>86</sup> increasing the number of significant cases that could be reported. Prior to this, Singapore was indebted to the generosity of the Malayan Law Reports, and was limited in the number of cases that could be reported. Third, sometime in the early 1990s, the Attorney-General's Chambers spearheaded a project called LawNet, which aimed to provide an online database of, *inter alia*, reported and unreported decisions in Singapore. As the Internet became more sophisticated, so too did LawNet. In 1998, the first version of the Legal Workbench was launched, providing users with a fully searchable database of all local decisions. The Legal Workbench provided, for the first time, access to all unreported decisions of the local courts, including judgments arising from Magistrate's Appeals. In 2001, the database expanded to include the judgments of the Subordinate Courts.<sup>87</sup> This was a huge step forward in terms of providing access to, and hence developing, local jurisprudence. Until then, unreported decisions were not easily obtained as one would have to seek permission to view them. Indeed, since they were not searchable, there was no way to tell if a decision on a particular point had ever been rendered unless one heard about it.<sup>88</sup>

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85 John Koh, *The First Chief* (Academy Publishing, 2010) at p 147.

86 This started as a collaboration with Butterworths Asia, before the Singapore Academy of Law took over the running of the reports in 2003. The Academy of Law was recently engaged in a re-issue of the Singapore Law Reports, which primarily involved the updating and revision of the headnotes of cases from 1965 to 2002. The project was completed and launched at the Opening of the Legal Year in January 2010.

87 As the vast majority of cases filed in Singapore courts are filed in the Subordinate Courts, and only a very small percentage (less than 1%) are appealed to the High Court, the availability of judgments arising out of those cases provide an invaluable wealth of legal precedents. For example, Yong CJ noted that some 3,000 grounds of decisions were issued in 1998 by the Subordinate Courts. See Yong CJ's speech at the Opening of the Legal Year 1998 on 10 January 1998, published in *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at pp 150–151.

88 For general background to the development of LawNet and the Legal Workbench, see Tan Ken Hwee, "Re-Engineering Online Case Law: Legal Research in Singapore" (2002) 4 UTS L Rev 55; and Yong CJ's speech at the Launch of the Legal Workbench on 28 February 1998, published in *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at pp 174–180. The Legal  
(cont'd on the next page)

59 There has, however, been a gradual decline in the number of reported cases. This could in part be due to the slight decrease in the number of judges serving the Supreme Court. This is represented in the chart below:

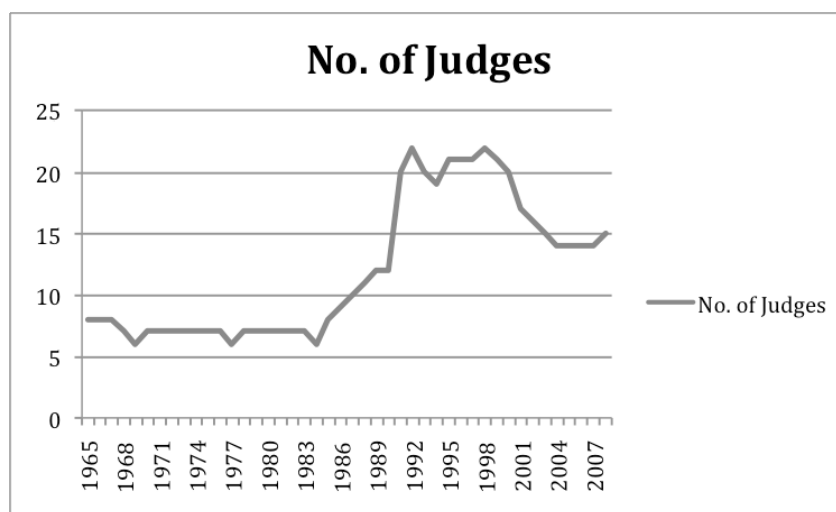


Chart A-2: Total number of Supreme Court Judges (including Judicial Commissioners) from 1965–2008

60 In 2003, for example, when the decline began, there were a total of 15 judges compared to 22 in 1998, 21 in 1999, 20 in 2000, 17 in 2001 and 16 in 2002.<sup>89</sup> The decrease in the number of serving judges continued between 2004 and 2007, when there were 14 judges. The number increased slightly to 15 in 2008. It is interesting to note that as the number of reported cases from the High Court has decreased, the number of cases from the Court of Appeal has been on the increase since 2006. This is partly explicable on the basis that judgments of the Court of Appeal tend to be reported as only the more significant cases are usually brought before them; but it could also be due to the fact that between 2006 and 2008, the Court of Appeal increased its permanent membership by one each year, resulting in a corresponding drop (though very minor) in the number of judges hearing High Court cases. One may also see a correlation between the number of reported decisions and the general decline in the number of cases filed in the

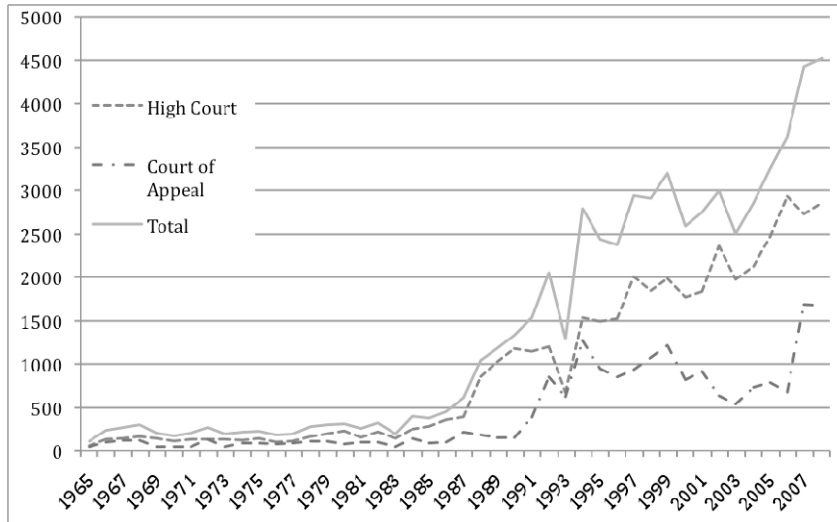
Workbench today also provides access, on a single platform, to decisions of other jurisdictions, including Malaysia, the UK and Australia.

89 For ease of calculation, judges who have served more than six months in a given year are counted as having served for that year. The precise dates of appointments of judges may be found at <<http://supcourt.gov.sg>> (accessed 1 September 2010).

High Court but a corresponding rise in the number of appeals before the Court of Appeal.<sup>90</sup>

**B. Total and average number of pages per reported judgment**

61 The next indicia are the total and average number of pages *per* reported judgment. The charts showing the results are first presented below:



**Chart B-1: Total number of pages of reported judgments issued from 1965–2008**

<sup>90</sup> Between 2007 and 2008, for instance, the number of civil and criminal cases filed in the High Court declined by approximately 1%. The number of appeals before the Court of Appeal in criminal and civil cases, however, saw an increase of about 11.5% and 38% respectively. Between 2006 and 2007, the number of civil cases filed in the High Court declined by 7%, though the Supreme Court generally saw an increase in the number of criminal cases. Appeals before the Court of Appeal increased by 28.6% and 15% for criminal and civil matters respectively. See *Supreme Court Singapore Annual Report* for the years 2007 and 2008, available at <<http://supcourt.gov.sg>> (accessed 1 September 2010).

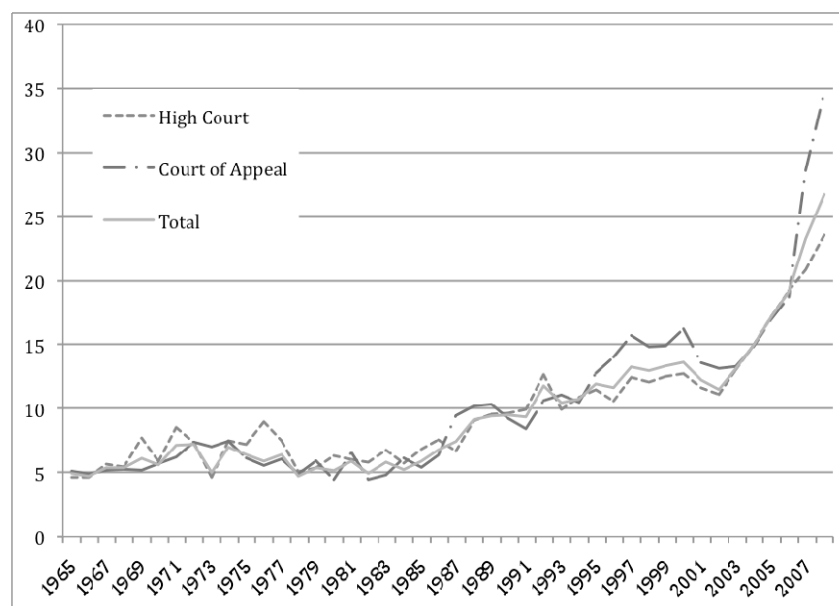


Chart B-2: Average number of pages per reported case issued from 1965–2008

62 Whilst not entirely conclusive, the productivity of the courts may be measured in terms of the length of judgments. At the very least, among other possible indicators, this is a relevant indication of the courts' productivity. In many ways, the numbers compiled – showing an increase in the length of judgments over the years – merely confirm what practitioners and academics already know.

63 It is noteworthy that the length of judgments coincides with three important turns in the development of Singapore law. Until about 1990, both the total and average length of judgments were more or less flat. Between 1990 and 2005, there was a general upward trend. While in 1990, the average length of a judgment was ten pages, this had increased by a third to 15 pages *per* judgment in 2005. Post-2005, the total and average length of judgments have seen a dramatic increase, reaching an average of more than 25 pages *per* judgment (for both the High Court and the Court of Appeal).

64 The increase in the length of judgments post-1990 is probably explicable on the basis of the increased strength of the Bench, as noted above. As the backlog started to clear, it is not unreasonable to assume that judges could also afford the time to expand on their judicial reasoning.<sup>91</sup> The availability of legal resources – afforded by the

91 By September 1993, the courts had cleared a backlog of 2,000 cases which had been set down for trial but still waiting hearing dates: see speech of Yong CJ at the  
(*cont'd on the next page*)

Singapore Law Reports and LawNet – must have also played a part in assisting judges and their law clerks in their research. The phenomenal rise in the length of judgments post-2005 coincides with an express ambition to promote Singapore law as the *lex mercatoria* of the region.<sup>92</sup>

65 Interestingly, and though not conclusive, there appears to be a correlation between a permanent Court of Appeal and its productivity. Between 1993 and 2001, when there were three permanent members appointed to the Court of Appeal,<sup>93</sup> the average length of Court of Appeal judgments was consistently higher than the High Court compared to the previous years in which both courts traded honours. Then, in April 2007, after V K Rajah JA was appointed to the Court of Appeal and the Court of Appeal had the permanence of three judges again, the productivity of the Court of Appeal spiked from 28 pages *per* judgment in 2007 to 35 *per* judgment in 2008.

66 From at least the perspective of the number of pages, which admittedly may not be wholly indicative of the courts' productivity, it may at least be possible to preliminarily conclude the growing local jurisprudence. As an early article observed, longer judgments would tend to contain elaboration of judicial thinking and philosophy on points of law that, in turn, provides fertile ground for practitioners, academics and future courts to develop the law further through writing and litigation.<sup>94</sup> This is particularly the case with regard to appellate judgments, where there is, by the very nature of such judgments, a focus on points of law.

### C. Citation of foreign cases

67 The next indicium is the citation of foreign cases. Here, we are concerned with two aspects of judicial law-making: first, which foreign jurisdictions the courts are citing, and second, in which subjects are the courts citing the most foreign decisions? There is of course a third permutation, *viz*, for a specific subject matter, which foreign

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Opening of the Legal Year 1997, 4 January 1997, published in *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at p 59. Whereas it took some five to six years for a writ to be heard in the High court in 1991, the average disposal time fell to under seven months in 2005: see *Halls of Justice* (Supreme Court, 2006) at p 53.

92 See para 20 of this article; as well as see *Halls of Justice* (Supreme Court, 2006) at p 103.

93 From 1993 to 1999, the Court of Appeal comprised Yong CJ, Thean JA and Karthigesu JA. After Karthigesu JA passed away towards the end of 1999, Chao Hick Tin JA was appointed to the Court of Appeal. After Thean JA's retirement in February 2002, the Court of Appeal only comprised Yong CJ and Chao JA, with the third member rotating among the High Court judges.

94 Lau Kok Keng *et al*, "Legal Crossroads – Towards a Singaporean Jurisprudence" (1987) 8 Sing L Rev 1 at 14.

jurisdictions do the courts cite the most? That is a more specific question, which is difficult to present in broad terms here. However, we do look at commercial and criminal cases specifically later on in this article to give a flavour of the possible analyses we can achieve with the data set. But for now, we will concentrate on the two former aspects.

(1) *Breakdown of origins of foreign cases cited*

68 The first aspect is the breakdown of the jurisdictions being cited. For ease of visual presentation, on the first chart below, the total citation of English cases has been separated from the total citation of *other* foreign cases. The second chart breaks down the foreign cases cited into nine different jurisdictions, including a general “others” category.

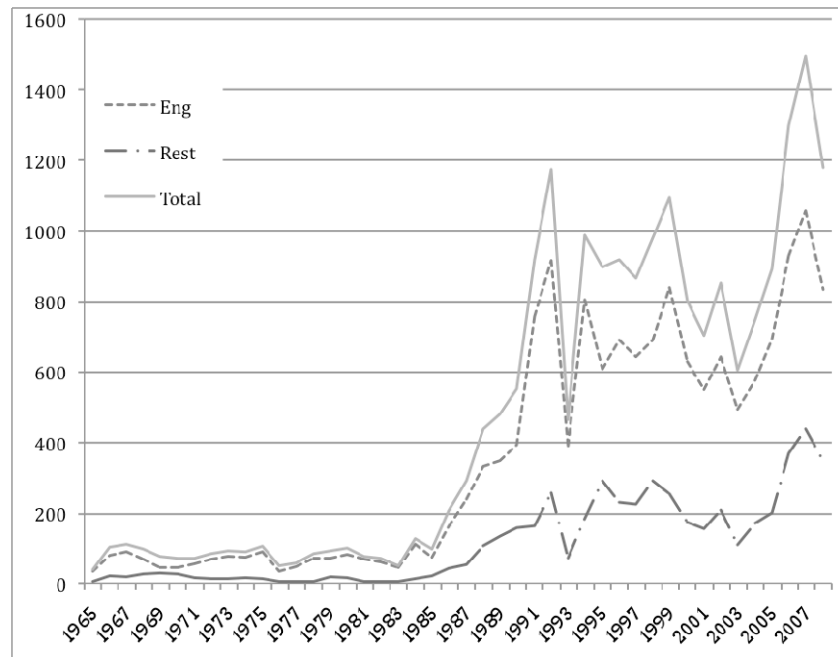
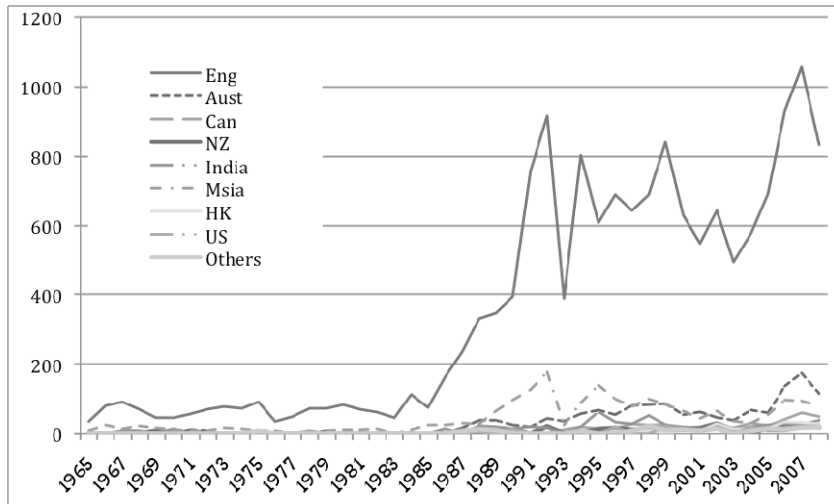


Chart C-1: Total number of foreign cases cited in reported decisions from 1965–2008, broken down into English and other jurisdictions



**Chart C-2: Total number of foreign cases cited in reported decisions from 1965–2008, broken down by jurisdiction (the order in which the various jurisdictions are ranked from most cited to least cited, as of 2008, are: England, Australia, Malaysia, Canada, India, Hong Kong, Others, New Zealand, and the United States)**

69 One of the key indicators of the extent to which a jurisdiction has been able to develop its own jurisprudence is the extent to which it continues to rely on foreign cases. Simply looking first to the raw number of foreign cases cited, it is clear that the trends in citing foreign cases may be classified as follows. First, there was a clear increase in the number of foreign cases cited towards the end of the 1980s and continuing into the early 1990s. This is probably due to the overall higher number of reported decisions being issued, as discussed above. What is interesting is that even as the total number of reported decisions increased in the 1990s, the overall number of foreign cases cited declined and never hit the high that we saw in 1991. This suggests that, on average, the number of foreign cases cited *per* reported decision probably declined. This corresponds with the drive to divorce ourselves from the automatic citation of foreign (and in particular, English) cases, as manifested by the passing of the AELA,<sup>95</sup> the abolition of appeals to the Privy Council and the Practice Statement of 1994. As we will see below, this should be seen in conjunction with the greater emphasis on citing local decisions.

70 Second, it will be noted, however, that the regularity with which courts cite foreign cases has increased post-2005 again, bringing us to record levels in 2007 despite the years 2005 to 2007 not being record years in terms of the total number of reported decisions. In 2008, the

95 Application of English Law Act (Cap 7A, 1993 Rev Ed).

total number of foreign cases cited dipped slightly, corresponding to the overall decrease in the number of reported decisions that year. The post-2005 figures suggest a resurgence in the number of foreign cases being cited on average. This may be said to coincide with Singapore's ambition to promote Singapore law, which undoubtedly entails a degree of coherence and consistency with international practice and jurisprudential norms.<sup>96</sup> The citation of more foreign cases could also be attributable to the fact that commercial disputes nowadays tend to be transnational in nature, thus requiring courts to look abroad in order to arrive at decisions in accord with international practice.<sup>97</sup>

71 Admittedly, these are merely preliminary observations on what these numbers mean. But at the very least, the numbers provide us with an observable and discernible indication of how the Singapore courts are citing foreign cases.

72 Charts C-1 and C-2 confirm that English law continues to be the dominant foreign influence on Singapore law. This is no surprise given Singapore's legal legacy (as outlined above) and England's continued leadership of the common law world. Still, on overall numbers, we do see more frequent citations of Australian cases, which now account for the second highest foreign citation. Citations of other jurisdictions appear more or less constant, though there has been a slight increase in the number of Canadian cases. This is indicative not only of Singapore's increasing independence of English cases, but also (indirectly) shows the rise of other common law jurisdictions. In particular, the influence of English law in Australian and Canadian courts has decreased in recent times. As these courts present judicial positions unique from the English ones, it is no surprise that the Singapore courts have turned to these jurisdictions as well. As an example, the English courts have in the area of pure economic loss from property defects steadfastly refused any possible claim in negligence. The Singapore courts, rather than follow the House of Lords decision of *Murphy v Brentwood District Council*<sup>98</sup> and *D & F Estates Ltd v Church Commissioners of England*<sup>99</sup> chose to follow Australian,<sup>100</sup>

96 The relationship between a jurisdiction's ambition to be a hub for international arbitration work and the development of its jurisprudence was observed by Chan CJ in his speech at the Conference on International Investment Arbitration on 20 January 2010 at para 10, available at <<http://supcourt.gov.sg>> (accessed 1 September 2010); and also Chan CJ's speech at the XVI International Congress of Maritime Arbitrators 2007 on 26 February 2007 at para 11, available at <<http://supcourt.gov.sg>> (accessed 1 September 2010).

97 The increasingly global nature of transactions and disputes was noted by Chan CJ in his speech at the 20th Annual Conference of the Inter-Pacific Bar Association on 4 May 2010, available at <<http://supcourt.gov.sg>> (accessed 1 September 2010).

98 See [1991] 1 AC 398 at 398–399.

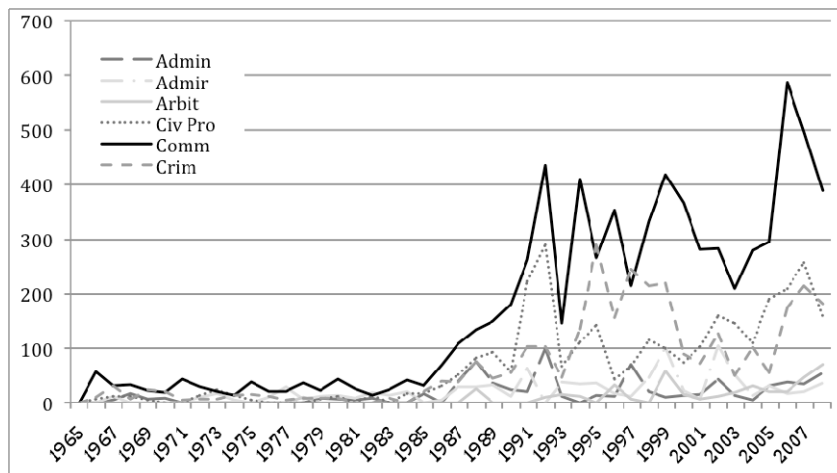
99 See [1989] 1 AC 177 at 177–178.

100 *Bryan v Maloney* (1995) 128 ALR 163.

Canadian<sup>101</sup> and New Zealand<sup>102</sup> decisions which likewise departed from the English position. As these jurisdictions provide viewpoints distinct from the English viewpoint, they likewise provide equally viable approaches for Singapore courts to consider. Also, as more areas of law begin to be subject to distinctly European jurisprudence and legislation, it may be that we will begin to see more citations of other common law jurisdictions such as Australia and Canada in the future.<sup>103</sup>

(2) *Breakdown of subject matters in which foreign cases are being cited*

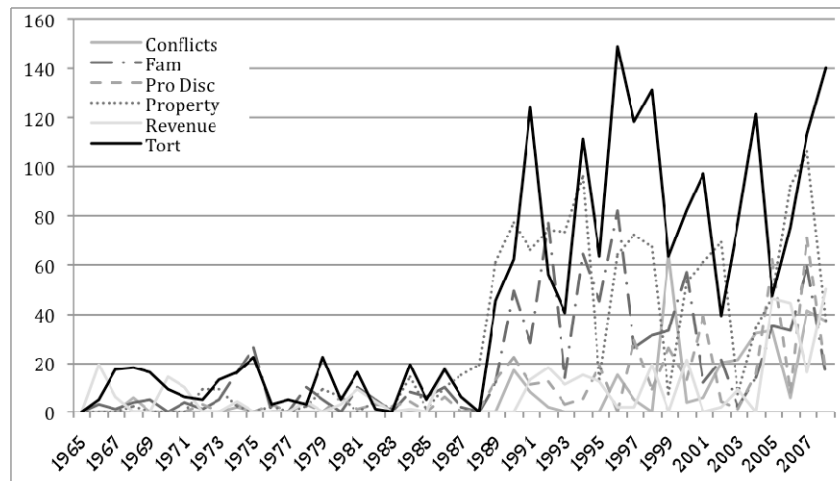
73 The next charts show *in which subject matters* the foreign cases are being cited. These charts show the number of foreign cases (*ie*, the total of all nine jurisdictions surveyed above) cited *per* subject matter over the study period.



101 *Winnipeg v Condo Corp No 36* [1995] 121 DLR 193.

102 *Invercargill City Council v Hamlin* [1994] 3 NZLR 513.

103 See the observations of Teo Guan Siew, "Choice of Law in *Foreign Non Conveniens* Analysis: *Puttick v Tenon Ltd* [2008] HCA 54" (2010) 22 SAclJ 440, noting the restrictions of European legislation on the scope of the English courts' jurisdiction to stay proceedings on the grounds of *forum non conveniens*. Another obvious area is also the restriction of European legislation on the issuance of anti-suit injunctions (see *Allianz SpA v West Tankers Inc* (Case C-185/07); [2009] WLR (D) 44). See also Yong CJ's speech at the Asia Pacific Courts Conference 1997 on 22 August 1997, published in *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at p 128 (noting that in developing our own autochthonous legal system, the laws of the UK, increasingly influenced by the European Community laws, made it undesirable and impracticable to depend too heavily on the English).



**Charts C3–4: Total number of foreign cases cited in reported decisions from 1965–2008, broken down into each subject category (the order in the first chart, from most number of foreign cases cited to least, as of 2008, is: Commercial, Criminal, Civil Procedure, Arbitration, Administrative Law, and Admiralty; the order in the second chart, following the same order, as of 2008, is: Tort, Revenue, Property, Conflict of Laws, Professional Discipline, and Family Law. Note that the scale for both charts are not identical.)**

74 Analysing the numbers, it is clear that foreign cases tend to be cited most frequently in commercial cases, which is no surprise. Cases on civil procedure also attract a high number of foreign citations, probably due to the fact that our rules of civil procedure are largely borrowed from the English. Indeed, this applies to arbitration and tort cases as well. This may in part be attributable to the fact that these subject matters are either based on the common law (*ie*, not really statutorily codified) or where codified, were based on English or foreign statutes. For arbitration specifically, England is by far the strongest and most popular seat of arbitration in both common and civil law countries. This probably explains why it makes sense for our courts to be consistent, even though there are differences in our arbitration legislations. All these may explain why the number of foreign cases cited in respect of these subject matters tends to be higher.

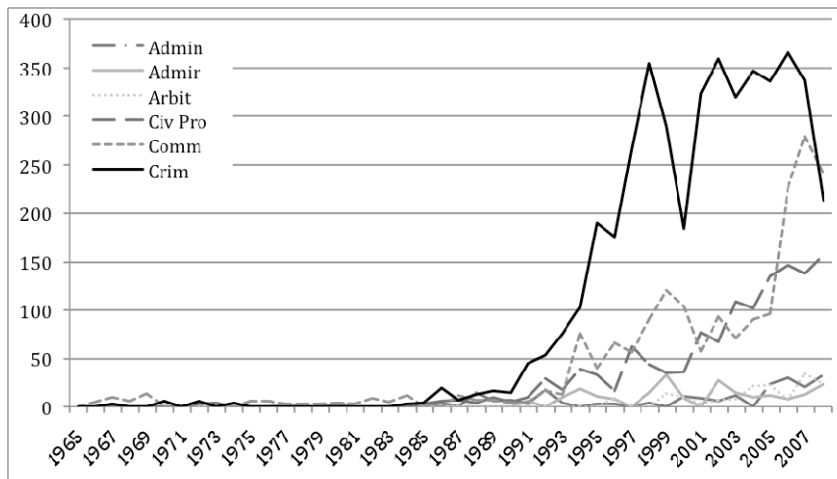
75 On the other hand, cases touching on criminal law and administrative law (including constitutional law) seem to cite fewer foreign cases. This in effect gives credence to the view that these areas of law are uniquely local. In part, this may be because these subjects concern matters of true “local” conditions and hence local precedents may be more relevant and persuasive. For example, foreign criminal cases concerning sentencing, *etc*, will not be very relevant to local cases touching on the same issue due to the very local concerns relating to sentencing issues. Similarly, administrative (including constitutional)

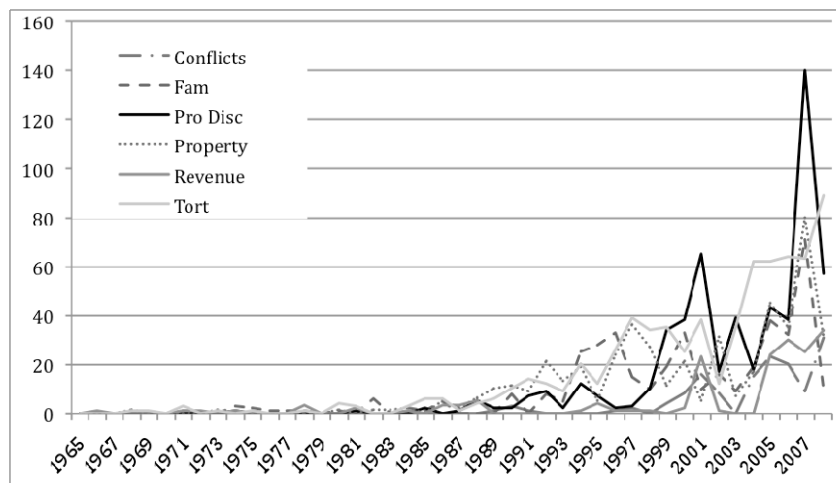
law cases often involve issues of local concerns, which have to be interpreted and understood in light of local conditions. Again, these may explain why not as many foreign cases are cited in respect of these subject matters.

76 The total number of citations of foreign cases is not, however, a complete picture of the extent to which Singapore has developed her own jurisprudence. This has to be looked at in the context of three further indices: the citation of local judgments; the citation of local judgments relative to foreign judgments; and the courts' willingness to depart from foreign decisions. We turn to these in the following sections.

#### **D. Local judgments cited**

77 For the local judgments cited, the intention was to see how many local judgments are being cited in each subject matter. The results are shown in the charts below.





**Chart D-1-2: Total number of local judgments cited in reported decisions, broken down into subject areas (the order of the first chart, from most number of local judgments cited to least, as of 2008, is: Commercial, Criminal, Civil Procedure, Administrative Law, Arbitration, and Admiralty; the order of the second chart, in the same order, as of 2008, is: Tort, Professional Discipline, Revenue, Property Law, Conflict of Laws, and Family Law.)**

78 The total number of local judgments cited has seen an increase coinciding with three distinct periods. While the number of local judgments cited was relatively flat until 1990, this has since been increasing steadily. This is not surprising for a number of reasons. First, the AELA<sup>104</sup> came into effect in 1993, and this was swiftly followed by the abolition of appeals to the Privy Council in London and the issuance of the Practice Statement in 1994. The effect of now being free to develop our own local jurisprudence is quite remarkable as the years 1993–1994 saw the beginning of a steady increase in the number of local decisions being cited relative to foreign citations. Second, the wider availability of and greater accessibility to local decisions through the Singapore Law Reports and LawNet also appears to have had an effect on sustaining the increased citations of local decisions in the 1990s. In 1989, the Singapore Academy of Law introduced its own journal; and in 1991, Singapore launched its own version of the *Halsbury's Laws of England*, covering all areas of commercial, family and personal law practice.<sup>105</sup> These added to existing local academic literature. Third, undoubtedly, the increase in the number of local decisions cited probably has to do with the

104 Application of English Law Act (Cap 7A, 1993 Rev Ed).

105 As Yong CJ put it, “the rapid and significant development of our local legal system and jurisprudence has made it imperative for a parallel work dedicated to Singapore law and interpretation”. See *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at p 121.

increased number of locally-trained judges and lawyers.<sup>106</sup> In recent years, however, the total number of local judgments cited has seen a gradual decline. This could simply be due to the general decrease in the overall number of cases being filed; as well as the fact that as disputes become more sophisticated, it is unrealistic to expect that reliance on prior local decisions would be sufficient.

79 The greatest number of local judgments being cited is unsurprisingly found in criminal cases. Perhaps more than any other subject, it lends itself to being more domestic in focus.<sup>107</sup> Civil procedure is also another area where, despite its English origins, one would expect a national court to develop its own jurisprudence. Innovations such as requiring evidence-in-chief of witnesses in civil trials to be by affidavit rather than led by oral evidence, requiring written submissions to be filed in advance of appeals, requiring that parties submit a bundle of documents, authorities and an opening statement before each trial, permitting parties to file “offers to settle” (the consequence of which is that if the ultimate judgment was not better than the terms of offer, costs would be awarded on a higher scale), not allowing parties to agree to extensions of time for setting down a case for trial or for filing notices of appeal, and reducing the validity period for service of writs (except for admiralty writs and writs served out of jurisdiction), and

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106 One of the points made in Lau Kok Keng *et al*, “Legal Crossroads – Towards a Singaporean Jurisprudence” (1987) 8 Sing L Rev 1 at 7–8 was the training of our judges and lawyers affected the extent to which they were more familiar with English law, hence affecting the development of a local jurisprudence. The authors noted that the vast majority of the judges serving at that time received their legal training in England. As of 1991, four of the six new judges appointed received their undergraduate legal training in Singapore. Today, with the exception of Chao JA and Belinda Ang J, the remaining judges received their legal training in Singapore. In terms of the legal practitioners, the Senior Counsel scheme was also set up to reduce dependence on Queen’s Counsel from other Commonwealth jurisdictions, who would tend to be more familiar with the jurisprudence of their own. Chan CJ also noted in his speech at the National University of Singapore’s Faculty of Law 50th Gala Anniversary Dinner on 1 September 2007 that from 1965 to 2007, graduates of the NUS Law Faculty groomed some 63% of those in private practice and 79% in the legal service, available at <<http://supcourt.gov.sg>> (accessed 1 September 2010).

107 See Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) 17 Singapore Law Review 431; “Rethinking the Criminal Justice System of Singapore for the 21st Century” in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000); and also Chan CJ’s speech at the International Conference on Criminal Justice Under Stress: Transnational Perspectives, New Delhi, India (24 November 2006), titled “From Justice Model to Crime Control Model” <[http://library.smu.edu.sg/subjects/CrimeControlSpeechIndia\(Final\)24Nov06\(4\).pdf](http://library.smu.edu.sg/subjects/CrimeControlSpeechIndia(Final)24Nov06(4).pdf)> (accessed 1 September 2010); and also, Michael Hor, “Singapore’s Innovations to Due Process”, a paper presented to the International Society for the Reform of Criminal Law’s Conference on Human Rights and the Administration of Criminal Justice, December 2000, Johannesburg <<http://www.isrcl.org/Papers/Hor.pdf>> (accessed 1 September 2010).

automatically discontinuing inactive writs, has led to jurisprudence to that is ultimately and uniquely local.<sup>108</sup>

### E. Citation of local judgments relative to foreign judgments

80 The next matter of interest is to compare the citation of local judgments relative to foreign judgments. This is interesting for a number of reasons, chief amongst which is the indication of how far we have come in terms of a truly local jurisprudence.

81 Here we are interested in two aspects again. First, we are interested in the global picture: what is the average number of foreign judgments cited *per case* compared to the average number of local judgments cited *per case*? Second, we want to investigate the ratio of the local cases cited to the ratio of the foreign cases cited in *specific* subject categories. This will give us an idea in which subject categories our local jurisprudence is arguably the strongest.

#### (1) The global picture

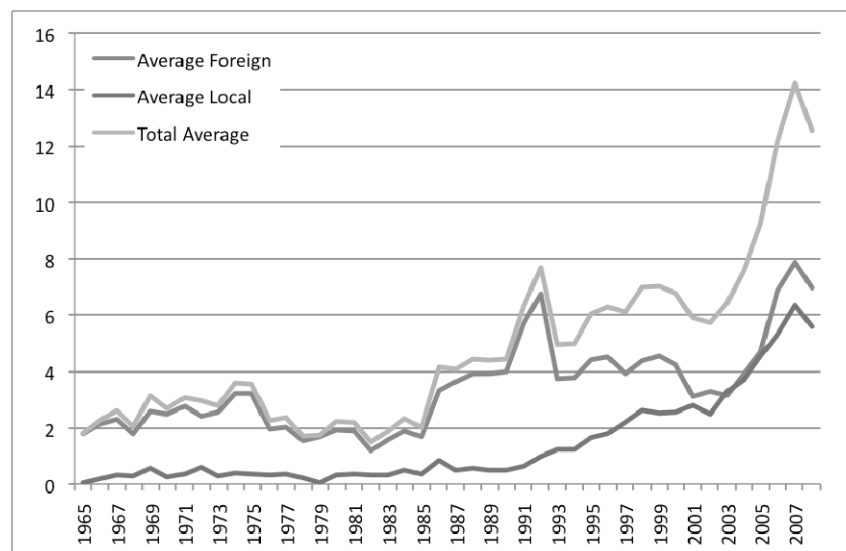
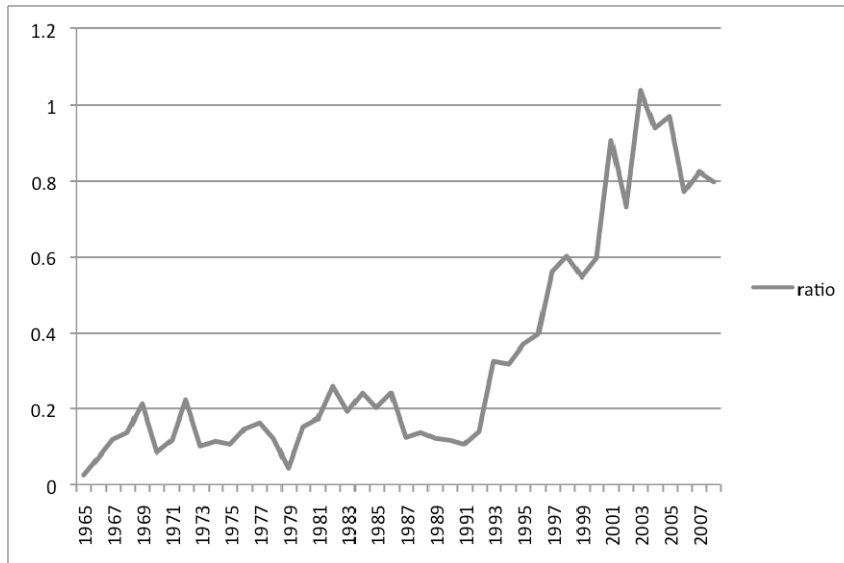


Chart E-1: Average number of citations per reported cases from 1965–2008 – broken down into foreign and local citations (the order in which the individual lines align at 2008 is, from top to bottom, total average, average foreign, and average local).

108 See generally *Halls of Justice* (Supreme Court, 2006) at pp 38–40, 133.



**Chart E-2: The ratio of total local to total foreign cases cited per reported decision from 1965–2008**

82 The preceding two charts measure the extent to which local, as opposed to foreign, cases are cited by the courts. The space between the blue line (indicating the average number of foreign case citations *per* case) and the red line (indicating the average number of local case citations *per* case) indicates the ratio between the two. Essentially, the closer the blue line is to the red line, the more local cases are being cited relative to foreign cases. For easier reading, this ratio is then represented in the second graph.

83 The obvious pattern that the charts show is that our courts have been citing local decisions more regularly and more frequently since the 1990s. As explained above, this is due in large part to various institutional changes (the introduction of the AELA<sup>109</sup> in 1993, the abolition of appeals to the Privy Council and the Practice Statement of 1994), as well as the increased accessibility to local jurisprudence. And, perhaps more subtle, the increase in the number of local decisions cited relative to foreign decisions may have to do with the increased number of locally-trained judges and lawyers.

84 The ever-closing gap between local and foreign cases has seen a slight shift in the last two or three years. Though in absolute terms the ratio of local to foreign cases remains high, and the average number of local judgments being cited *per* case remains high, our courts do appear to be citing relatively more foreign cases of late. There are two possible,

<sup>109</sup> Application of English Law Act (Cap 7A, 1993 Rev Ed).

not mutually exclusive, explanations for this. The first, as noted above, could simply be that as disputes become more sophisticated and transnational in character, it is unrealistic to expect that reliance on prior local decisions would be sufficient. The citation of foreign cases is simply a function of the courts looking for guidance in other jurisdictions. The second explanation could be that our courts are making a conscious effort to “internationalise” their jurisprudence, as part of its ambition to promote Singapore law, which entails assuring the business community that its jurisprudence is consistent with the best international practice.

(2) *Ratio of local to foreign cases cited in specific subject categories*

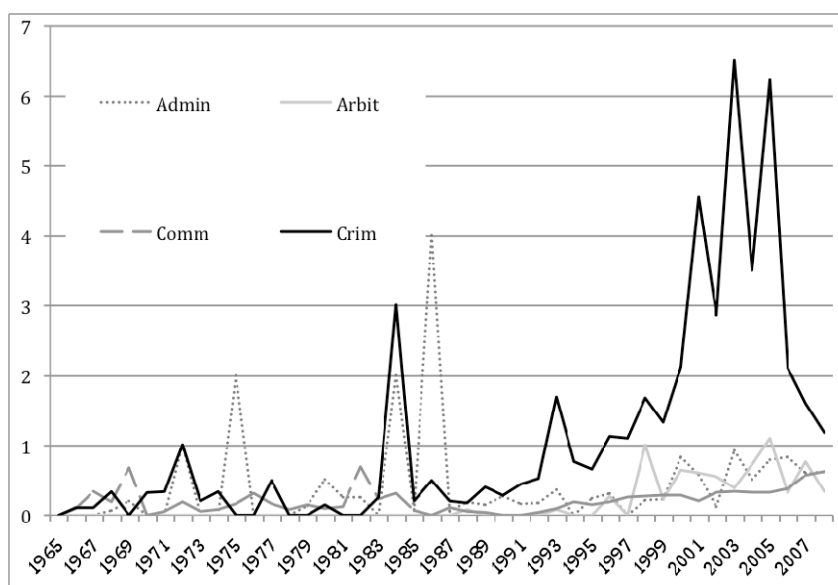


Chart E-3: Ratio of local to foreign in each subject category

85 The preceding chart shows the ratio of the citation of local cases to the citation of foreign cases in selected subject categories. For ease of visualisation, only four subject categories are presented, leaving the other categories to be elaborated on another occasion.

86 From the chart, it is clear that criminal law displays the highest fidelity to local cases, which makes sense given their domestic focus and a uniquely local approach to crime.<sup>110</sup> The number of local cases cited in

110 See Chan Sek Keong, “The Criminal Process – The Singapore Model” (1996) 17 *Singapore Law Review* 431; “Rethinking the Criminal Justice System of Singapore for the 21st Century” in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Butterworths, 2000); and also Chan CJ’s speech at the International Conference on Criminal Justice Under Stress: (cont’d on the next page)

criminal law matters has – in recent times – almost always exceeded the number of foreign cases cited. The fluctuation towards the tail end of the chart does not disturb this conclusion. Administrative law, which includes constitutional law cases, likewise displays a close ratio between the citation of local and foreign cases.

87 On the other hand, commercial and arbitration cases show a stronger reliance on foreign cases. This may be indicative of several reasons. First, in these areas, the courts may be more willing to engage in comparative reasoning, drawing from examples across different jurisdictions. Second, these areas are those which involve a decidedly “international” dimension: here, uniformity on an international scale is desired.

88 But all in all, the chart does show that in some areas of cases at least, the courts display a stronger reliance on local cases, and in others, the opposite is true. The next section will explore this a bit further by an in-depth study of the Singapore courts’ treatment of foreign cases in commercial cases and criminal cases.

***F. Citation of foreign cases – Courts’ willingness to depart from foreign cases***

89 The aim of this section is to investigate the courts’ willingness to depart from foreign cases. Here, we look closely at how courts treat the cases emanating from different jurisdictions in each subject matter.

90 A few preliminary remarks are necessary to explain the charts. For each jurisdiction, the courts’ treatment of cases are looked at across three periods, each represented by a different coloured bar. Blue represents the period from 1965 to 1989, red represents the period from 1990 to 2005 and green represents the period from 2006 to 2008. These periods were chosen to mark three distinct periods of the Singapore legal system. 1990, as already mentioned, marked the start of a series of reforms towards the “localisation” of Singapore law. This would thus mark a relevant point in our legal history from which to investigate whether those reforms resulted in any change in how our courts treat foreign cases. On the other hand, 2006 marked the start of an expressed desire by the current Chief Justice to devote more judicial effort towards

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Transnational Perspectives, New Delhi, India (24 November 2006), titled “From Justice Model to Crime Control Model” <[http://library.smu.edu.sg/subjects/CrimeControlSpeechIndia\(Final\)24Nov06\(4\).pdf](http://library.smu.edu.sg/subjects/CrimeControlSpeechIndia(Final)24Nov06(4).pdf)> (accessed 1 September 2010); and also, Michael Hor, “Singapore’s Innovations to Due Process”, a paper presented to the International Society for the Reform of Criminal Law’s Conference on Human Rights and the Administration of Criminal Justice, December 2000, Johannesburg <<http://www.isrcl.org/Papers/Hor.pdf>> (accessed 1 September 2010).

detailed lawmaking. We will thus see if that expressed desire led to any changes in how the courts treated foreign cases.

91 For each jurisdiction, the courts' treatment of the foreign cases is divided into three possibilities: accepted, not accepted, and distinguished. "Distinguished" forms a distinct category in itself, for that could mean the court either distinguished the foreign law as being inapplicable to the present facts (but yet "accepting" it), or distinguished foreign law on the basis that the local law is different, but without expressly declining to "not follow" that foreign law concerned. Thus, foreign cases "distinguished" by the local courts are at best ambiguous in terms of how the foreign case was treated, thus it was decided to leave them as a separate category. Next, "accepted" simply means those cases in which the foreign law was either expressly "followed" by the local court, or "referred". "Referred" is here of course not as strong as "accepted", but it was decided that it should form part of "accepted" cases since to refer without declining to follow or distinguishing means that there is at least some degree of acceptance, if not as much as "followed". Finally, "not accepted" is self-explanatory, and refers to those foreign cases which our courts declined to follow.

92 With these remarks in mind, let us now look at the charts showing our courts' treatment of foreign cases, divided by jurisdiction, in the subject areas of commercial law and criminal law respectively.

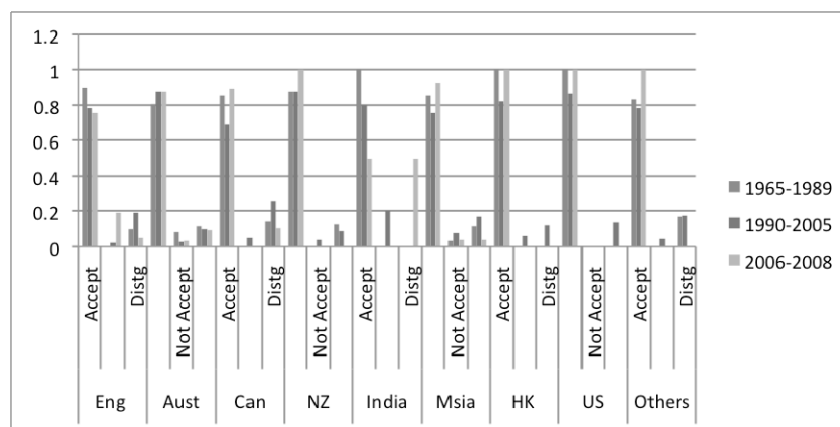
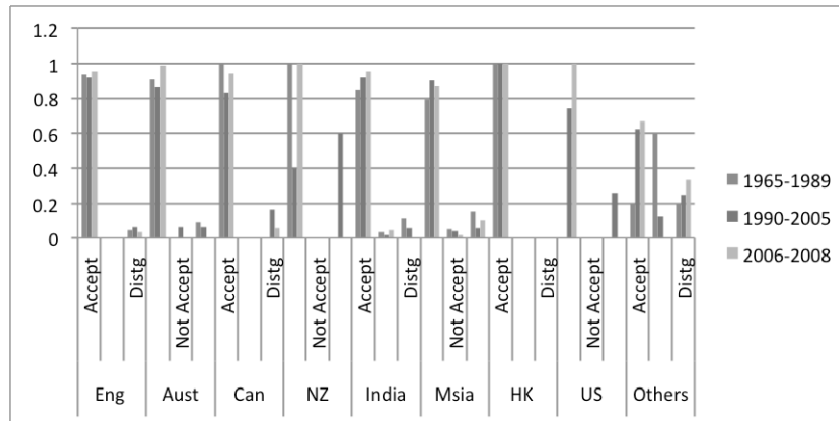


Chart F-1: Degree of departure in reported commercial cases from 1965-2008



**Chart F-2: Degree of departure in reported criminal cases from 1965–2008**

93 As has been mentioned, it appears from the analysis in the previous sections that there are three more or less distinct periods in the development of Singapore law – from 1965 to 1989, from 1990 to 2005 and post-2005. These periods not only coincide with the change in Chief Justices, but also mark quite distinct priorities or concerns in the administration of justice in Singapore. While the first period saw a relatively small judiciary dealing with a backlog of cases in the immediate years post-independence, the second period marked the start of a serious effort to eliminate the backlog, increase efficiency and wean Singaporean jurisprudence off its English parents, and the third period is being characterised by an active promotion of Singapore law.

94 It is interesting to track the courts' willingness to depart from the decisions of foreign cases over the three periods and across different subject matters. Due to space constraints, the findings of this study will only be presented in two subject areas: commercial cases and criminal cases. Further, we also acknowledge that these numbers may be affected by foreign decisions being cited to the court more "indiscriminately" in a period as compared to another, but there is no way of tracking the specific citation records. Unlike English case reports that also present the cases cited in argument to the court (but not addressed in the judgment), local case reports do not present such data. As such, the assumption has to be made that the cases cited to the courts have remained proportionately identical throughout the three periods. While this is not the most satisfactory, this is one assumption that it is necessary to make because of the impossibility of obtaining data regarding the actual citation of cases to the courts.

95 Chart F-1 shows an interesting trend. The willingness of the courts to depart from English decisions in commercial cases is quite apparent – evidenced by the decline in the number of English decisions followed and the increase in the number of English decisions not

followed. On the other hand, decisions from other jurisdictions such as Australia, Canada and New Zealand have been accepted at a higher rate more recently than in the past.<sup>111</sup> When read in conjunction with the data presented in the preceding sections, the suggestion that emerges is that while English cases are being cited as a point of first reference, our courts do not always accept or follow English law, at least not without also consulting other jurisdictions. Therefore, even though our courts have recently been citing an increasing number of foreign cases, in actual fact, it is not a case of blindly following the approach of any one particular foreign jurisdiction. What is probably happening is that our courts are building a Singaporean jurisprudence through the careful selection and amalgamation of the best practices and norms from a wide range of jurisdictions.<sup>112</sup> It is of course possible to make the counter-argument that this trend is explicable on the basis that the choice of which jurisdictions are cited depends also on the jurisdictional origin of the relevant legislation. There is no doubt that there will be a tendency to cite cases from the jurisdiction which inspired the relevant legislation. But this cannot possibly explain the greater increase in citations of other jurisdictions, corresponding to the greater willingness not to follow the English cases, since there is no reason to suggest that English-derived legislation is being applied less compared to other legislation nowadays. Although “commercial law” in this study is broadly defined, a significant proportion of the reported cases involve contract cases which are generally governed by the common law. A recent example of the courts’ willingness to depart from the English position which was undoubtedly reasoned and not influenced by any legislative history, is the Court of Appeal’s decision in *MFM Restaurants Pte Ltd v Fish & Co Restaurants Pte Ltd*.<sup>113</sup> In other instances where the courts took a position different from the English – such as in torts –

111 See Yong CJ’s speech at the Asia Pacific Courts Conference 1997 on 22 August 1997, published in *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at p 121 (“we in Singapore have been following the changes and developments in Australian courts with great interest”).

112 It was also noted by Yong CJ at the Singapore Academy of Law Conference 2005 on 12 January 2006 that Singapore has in areas such as equity (which has been classified as commercial for the purposes of this study) and land law, shown a willingness to depart from English authorities; and interestingly enough, some of these decisions have in turn been endorsed by the English courts and cited by leading academics: see *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at pp 565–566. The same may be said for torts as well: see, eg, *RSP Architects Planners & Engineers v Ocean Front Pte Ltd* [1995] 3 SLR(R) 653 (departing from *Murphy v Brentwood District Council* [1991] 1 AC 398; [1990] 2 All ER 908 and *D & F Estates Ltd v Church Commissioners of England* [1989] AC 177) as well as *Malcomson Nicholas Hugh Bertram v Naresh Kumar Metha* [2001] 3 SLR(R) 379 (which came to a different conclusion on the actionability of harassing actions than the English Court of Appeal in *Wong v Parkside Health NHS Trust* [2001] EWCA Civ 1721). See now, also, *Spandek Engineering v Defence Science & Technology Agency* [2007] 4 SLR(R) 100.

113 [2010] SGCA 36.

there was no indication that this was due to the historical origins of any applicable legislation.<sup>114</sup> Indeed, in the study of criminal cases,<sup>115</sup> which are governed by legislation based on either Indian or English equivalents, a rise in citations of other jurisdictions has never the less been seen. It is, for instance, no longer surprising to find Australian sentencing precedents cited in our courts' sentencing decisions despite the Penal Code being Indian in origin. All these very strongly suggest that the citation trends we are observing are due to greater and more conscious efforts on the part of the Judiciary to develop what it believes will be a richer, more sophisticated jurisprudence.

96 More or less the same broad comment is applicable to the data presented at chart F-2, which tracks the development of criminal law over the years, except that due to the different character and history of Singapore's criminal laws, the jurisdictions that are favoured differ slightly from the commercial cases. We see, for instance, a steady increase in the rate of acceptance of Indian decisions – not surprising given that the foundations of criminal law (*viz*, the Penal Code and the Evidence Act) are Indian in origin. The continued reliance on English cases is also unsurprising given that the Criminal Procedure Code is primarily modelled after the English. But some fascinating trends were found – such as the increased reliance on Australian and US decisions, both at their highest rates in the years post-2005. This suggests even as we build a distinctly local criminal jurisprudence, our courts do not remain blinkered to the views of other mature jurisdictions.

97 More interesting is a comparison of the data across the commercial and criminal cases. First, it is significant that the acceptance rate of jurisdictions across both these spheres is different. For example, whereas the acceptance rate of Indian decisions in commercial cases has declined steadily across all three periods, the acceptance rate in criminal cases has increased. This shows that for certain subject matters, our courts rely on different jurisdictions to varying extents. It is of course well known that our Penal Code was based on the Indian Penal Code, and it is thus no surprise that we have followed Indian cases in criminal matters *more than* we have followed Indian cases in commercial cases. Secondly, we can observe a more consistent acceptance rate with respect to commercial cases than criminal cases. This may be in part due to the

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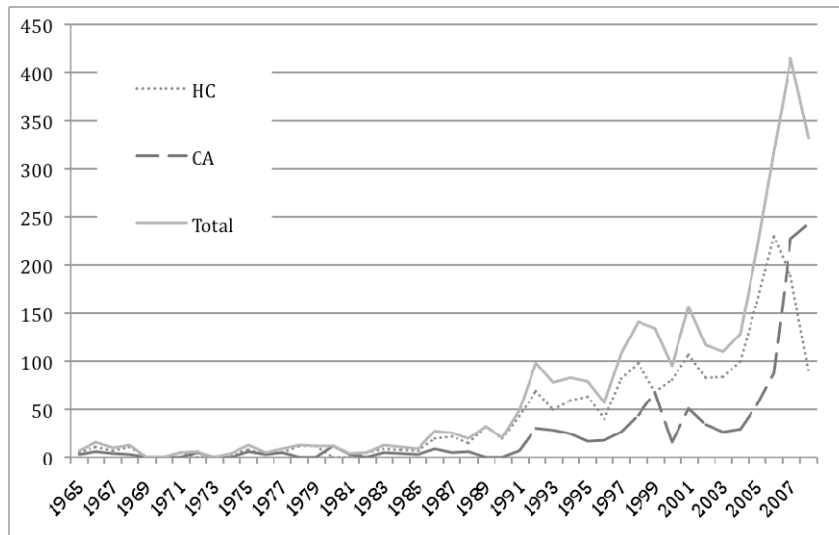
114 See the following tort cases *RSP Architects Planners & Engineers v Ocean Front Pte Ltd* [1995] 3 SLR(R) 653 (departing from *Murphy v Brentwood District Council* [1991] 1 AC 398; [1990] 2 All ER 908 and *D & F Estates Ltd v Church Commissioners of England* [1989] AC 177) as well as *Malcomson Nicholas Hugh Bertram v Naresh Kumar Metha* [2001] 3 SLR(R) 379 (which came to a different conclusion on the actionability of harassing actions than the English Court of Appeal in *Wong v Parkside Health NHS Trust* [2001] EWCA Civ 1721). See now, also, *Spandek Engineering v Defence Science & Technology Agency* [2007] 4 SLR(R) 100.

115 See paras 96–97 of this article.

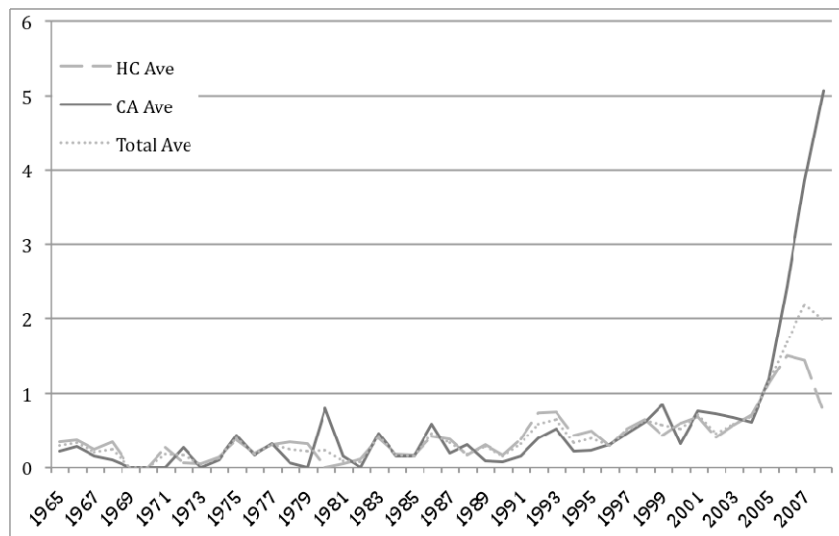
higher relevance of foreign cases in commercial cases generally as compared to foreign criminal cases.

**G. Academic citations**

98 Finally, the way the courts have cited academic materials in their decisions was looked at. Here, three aspects of their citation were investigated, each represented by each of the graphs below.



**Chart G-1: Total number of academic citations in reported decisions from 1965–2008**



**Chart G-2: Average number of academic citations in reported decisions from 1965–2008**

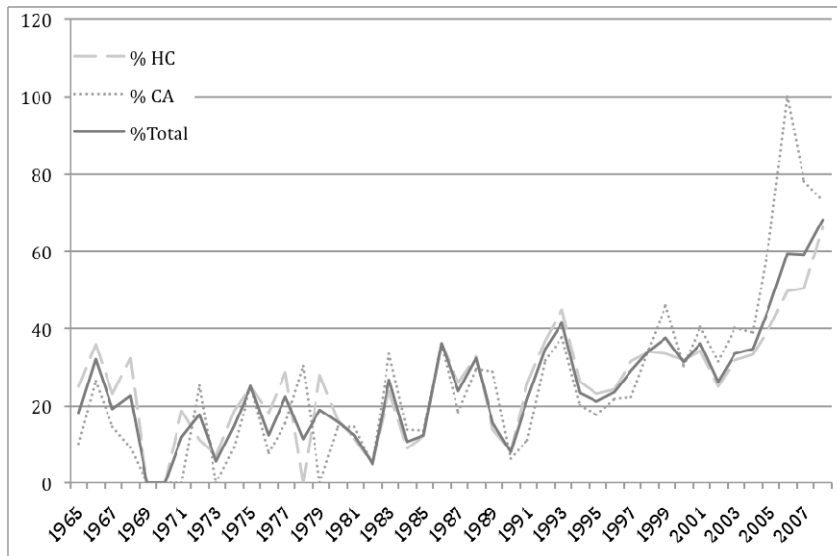


Chart G-3: The percentage of reported decisions citing academic writing from 1965–2008

99 As alluded to above, academic writings have become more important to judicial decision-making, especially on difficult points of law. An express nod to the importance of academic literature was made by Yong CJ at the Singapore Academy of Law Conference 2006, where he noted that Singapore now had no less than five academic journals on Singapore law,<sup>116</sup> in addition to, *inter alia*, such authoritative works as the *Halsbury's Laws of Singapore* and *Butterworths Annotated Statutes of Singapore*.<sup>117</sup> Chan CJ also echoed similar sentiment when he encouraged local academics to write on Singapore law.<sup>118</sup>

100 The charts above confirm the increasing influence of academic writings on judicial opinions, a trend which began in the early 1990s and saw a dramatic rise post-2005. An interesting observation is that the Court of Appeal has taken the lead in citing academic materials, surpassing the average by a remarkable margin since about 2005. This affirms the Court of Appeal's role in Singaporean jurisprudence in developing our laws. And certainly part of that development depends heavily on academic works.

116 These are: the Singapore Academy of Law Journal, the Singapore Journal of Legal Studies, the Singapore Law Review, the Singapore Year Book of International Law and the Singapore Academy of Law Annual Review.

117 Published in *Speeches and Judgments of Chief Justice Yong Pung How* (Supreme Court, 2006) at pp 564–565.

118 See, Janice Heng, "Cite local court rulings first: CJ urges lawyers; other cases can be used for comparison or criticism" *The Business Times* (19 May 2007). Melissa Sim, "Write on local law, CJ tells academics" *The Sunday Times* (2 September 2007).

## VI. Conclusion

101 The ambition to develop our own jurisprudence is an ongoing enterprise. Serious efforts towards this end can fairly be said to have been made only in the 1990s with the introduction of both institutional and other changes designed to reduce our dependence and reliance on foreign (in particular, English) law and jurisprudence. The data collected confirms that during this period, local jurisprudence grew (evidenced by the increased number of reported decisions as well as the length of decisions), the number of local decisions cited in subsequent cases increased, the gap between citations of local cases relative to foreign cases correspondingly narrowed, and there was a greater willingness to depart across various subject areas. As we entered into the second half of the 21st century, the priority has been to promote Singapore law as part of an overall strategy to position Singapore as a hub for legal activity and services in the region. Cases have no doubt become more complex as well as commercial transactions become more sophisticated and transnational in character. As a consequence, the data also shows that while the number of local decisions cited relative to foreign cases remains high, it is clear that our jurisprudence is developing in a more cosmopolitan fashion – more foreign cases are being cited than ever before, and cases from jurisdictions other than England are being cited more regularly than before. At the same time, our courts are careful to distinguish or not follow foreign cases where necessary. This suggests that Singapore law is becoming a lot more international than it has been. In future articles, the extent to which these efforts, committed though still nascent, have been reciprocated in terms of citations by other jurisdictions and discussions in foreign academic literature will be examined.

102 A brief word might be said about these future works. A second series of articles with an emphasis on the “internal” analysis of the development of Singapore law. This “internal” analysis, so named because it is concentrated on the internal dynamics of the development of Singapore jurisprudence, includes the following:

- (a) The growth and independence of local jurisprudence, with a focus on the extent to which Singapore courts are citing local case law as opposed to foreign law.
- (b) The reliance on academic arguments in local judicial decisions.
- (c) The nature of local academic writing.

These topics will be elaborated on separately, and the methodology of research will be proposed, in the subsequent part of this proposal.

103 A third series of articles with an emphasis on the “external” analysis of Singapore law. In line with the recent emphasis on developing Singapore as a hub for legal services,<sup>119</sup> the extent to which Singapore law has been adopted (and hence “exported”) to other countries will be explored. This will concentrate on the following aspects of Singapore law: judicial decisions and academic commentaries.

104 It is hoped that this article and the findings set out have provided some food for thought in terms of the direction that Singapore has taken in developing its jurisprudence. The statistics do show that efforts to develop, and subsequently promote, Singapore law have indeed taken root and have had a profound influence in judicial decision-making. Such change has been the result of important personalities in the local legal scene, many of whom have been mentioned in this article. Indeed, the possibility of studying “Singapore law” resulted from the efforts of these personalities. It is hoped that the authors’ future works will be able to showcase the efforts of these personalities either directly, or indirectly, via a similar presentation of statistics as has been endeavoured in the present article.

105 Perhaps this article may be permitted to end on a slightly more personal note. A particularly heart-warming aspect of the project has been that the student research assistants have been able to see the development of Singapore law from past to present, from little to much, and from infancy to maturity. They now use local textbooks containing *Singaporean* law which has been the result of contributions of many in the years leading to the present. Who knows what the future holds for students of the law such as them? We cannot foretell the future, but it may be safe to say that there is cause for optimism. This article is dedicated to these students, who now study a Singapore legal system more complex – neither totally reliant on foreign law nor completely local – than it has ever been in its (relatively) short history.

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119 *Full report of the Committee to develop Singapore legal sector* <[http://notesapp.internet.gov.sg/\\_\\_48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/\\$file/Justice%20V%20K%20Rajah%20report.pdf](http://notesapp.internet.gov.sg/__48256DF200173A1F.nsf/LookupMediaByKey/GOVI-79LDSM/$file/Justice%20V%20K%20Rajah%20report.pdf)> (accessed 19 March 2009).