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### The Landscape of Singapore's Insurance Contract Law: Initial Findings on the Use of Authorities of Reported Singapore Judgments regarding Insurance Disputes from 1965 to 2010

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# Law: An Asian Identity?

## 9<sup>th</sup> Asian Law Institute Conference

Thursday and Friday, 31 May and 1 June 2012, Singapore

### The Landscape of Singapore's Insurance Contract Law:

#### Initial Findings on the Use of Authorities of Reported Singapore Judgments regarding Insurance Disputes from 1965 to 2010

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## **Abstract**

Initial findings of an empirical study of the citations of 80 reported Singapore insurance judgments between 1965 and 2010 show that Singapore courts have not developed a stronger character in the area of insurance law. Though British cases represent 363 of the 512 cases cited, we find that jurisdiction is not a predictor of whether a case is followed or distinguished. However, being a case decided by the UK Supreme Court (including the former House of Lords and Privy Council) is more likely to be followed by Singapore courts regarding insurance law. Nonetheless, Singapore judges cite more English textbooks than local ones. There are also more cases cited when UK statutes are considered. While we may have found some indicators for an English case to be followed, there is no strong indicator of how likely an English case is distinguished. Thus, the perception that Singapore insurance law follows English law is partly correct; but the dominance of English law is not as strong as commonly believed.

# I. Introduction

The objective of this article is to examine the proximity Singapore's insurance law in relation to English law based on some initial findings from an empirical research of the use of citation by Singapore judges in insurance judgments. The key question is how exactly close Singapore's insurance law is to English law. In other words, how far has Singapore gone its own ways in the area of insurance law? The answer will delineate the landscape of Singapore's insurance case law and, to a certain extent, the common law in Singapore.

In general, Singapore's insurance law is quite similar to English law. Singapore inherits English common law tradition. Insurance law were first developed in the 17th century by English judges. Later, some rules were codified in the Marine Insurance Act 1906.<sup>1</sup> In Singapore, the Marine Insurance Act 1906 and the Third Parties (Rights against Insurers) Act 1930 has been adopted in its entirety;<sup>2</sup> and the Life Assurance Act 1774 was incorporated into section 61 of the Insurance Act.<sup>3</sup> Therefore, it seems to be the case that where there is a gap in Singapore's case law, English legal positions may be followed.

Against this backdrop, one might wonder whether Singapore had developed its own character in insurance law since its independence in 1965. Traditionally, lawyers might look at the facts and holdings of each Singapore judgment and work out the logics and doctrinal position taken by Singapore courts. This research will take a different approach to answer this question. This article will adopt statistical analysis of the use of citation of cases or other reference materials by judgments reported in the Singapore Law Reports (Reissue version). The purpose to analyse the use of case law by Singapore courts in order to test the following hypothesis:

1. English cases are dominant in Singapore insurance judgments;
2. English authorities are more frequently cited when it involves the interpretation of a statute borrowed from the UK;
3. There should be more and more judgments cited as time goes by; and
4. Decisions issued by higher courts are followed more frequently than those of lower courts.

In addition, this article will also consider: (1) whether the use of local or foreign authorities (i.e. whether a case is followed, considered, referred or distinguished) has any co-relation with other factors such as judge, counsel, nature of a dispute, or the year of a judgment, etc.; and (2) how do Singapore courts consider materials other than local or foreign judgments (e.g. well-known textbooks, etc.).

Insurance law can offer a good start for further analysis for the reasons that (1) insurance law is a specialised area with implications in both private law and regulation; (2) many doctrines in insurance contract law are created by English case law but have been codified into a statute; and (3) there is a decent amount of local cases for analysis. In the following sections, we will first

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<sup>1</sup> The preamble of the Marine Insurance Act also specifies that this is “[a]n Act to codify the law relating to marine insurance.” For the history of English insurance law, see EJ MacGillivray and others, *Macgillivray on insurance law relating to all risks other than marine* 12-16 (11th edn, Sweet & Maxwell : Thomson Reuters 2008).

<sup>2</sup> Marine Insurance Act, Cap 387, Revised Edition 1994; and Third Parties (Rights Against Insurers) Act, Cap 395, 1994 Revised Edition.

<sup>3</sup> Cap 142, 1994 Revised Edition.

explain the methodology of this research. In Part III, we will offer a general description of reported Singapore insurance judgments and explain our analysis to test the hypothesis. Part IV will be the conclusion.

## II. Methodology

This article will analyse insurance cases reported in the Singapore Law Reports (Reissue version)(hereinafter referred as “SLR”). This article relies on the information provided by editors of the law report. The methodology can be explained in several points. First, a judgment is considered an insurance case if a case is listed under “insurance” in the index of SLR. We do not take into account judgments with only neutral citation or those reported only in the Malayan Law Journal if it is not reported in the SLR. As of the end of 2010, there are 80 insurance cases reported (together, “Singapore insurance judgments”).

There are practical reasons for focusing on cases reported in the SLR. On the one hand, the editors of law report already provide useful and edited information regarding a judgment, including keywords, a list of cited cases, annotations, etc. The information is public and we assume that it is accurate, consistent and reliable so that this research can be founded on a more objective ground. On the other, the cases reported in the SLR should usually be considered more important to the development of law than other cases.

Second, there are two aspects of analysis: one for Singapore insurance cases citing earlier cases and one for the cases cited in these Singapore judgments. On the one hand, this article will analyse the cases or other reference materials cited in Singapore insurance judgments. The data will show the general picture of how Singapore courts use precedents. This provides a base to contrast with several factors, such as the court (Court of Appeal or High Court), year of decision, nature of the policy in dispute (e.g. life policy, marine policy or other policies), the nature of a dispute (e.g. claim for insurance money, contribution, or subrogation, etc.), legal doctrines involved (e.g. subrogation or contribution). The purpose is to find out whether the use of citation by Singapore courts has any correlation with different factors and whether we can predict or explain the number of case law or trends of legal citations.

On the other, this article will analyse the list of judicial cases that have been cited by Singapore courts in Singapore insurance judgments. This article will analyse the relationship between how a case is treated by Singapore court (i.e. how it is annotated) and other variables (e.g. the year of a case, the court issuing the decision, etc.). The two aspects should illustrate different perspectives on the use of legal citations by Singapore courts.

Third, this article will analyse the annotation given by law reporters with regard to each judgment. Reporters of the SLR did a comprehensive job in assigning an annotation to each case cited in a judgment. According to the SLR, there are six annotation terms for cases and one for legislation. The definition of annotation in SLR is reproduced in the table below:

Table 1: Meaning of Annotations

For cases	
Followed (folld)	This is used to denote that the principle of law established in the case (or the <i>dictum</i> referred to) has been applied in the instant case.

Not followed (not folld)	This is used where the court has consciously refused to follow a case although potentially relevant. It implies that the annotated case is wrong. If a case is not followed because of some distinction in facts or law, the proper annotation would be distinguished (distd).
Distinguished (distd)	This is used where the annotated case is not applied in the instant case due to some distinction in the facts or in the law.
Overruled (overd)	This is used only where a higher court has held the annotated case to be wrong. Where the court has no power to overrule (eg the Singapore Court of Appeal <i>vis-à-vis</i> a House of Lords decision), the proper annotation would be “not followed” (not folld).
Referred (refd)	This is used to describe all the residual cases whose annotation does not fall within any of the above categories.
For legislation	
Considered (consd)	This is used to denote that a legislative provision has been interpreted and applied (or not applied), substantively considered or otherwise dealt with in a substantive manner.

These annotations reflect the strength of a citation, which in turn may indicate how Singapore courts consider a precedent so as to help us constructing Singapore’s insurance law. If a case is followed by a Singapore judgment, it means that the cited case would become a precedent for Singapore law. In contrast, if a case is not followed or simply overruled, it means that the cited case clearly does not have the effect of *stare decisis* at least for a dispute with similar facts. Moreover, if a case is distinguished, it might not have as strong an effect as when it is clearly followed. However, it may still serve the purpose of clarifying the scope of law by differentiating facts. Thus, when a case is distinguished, it is still a weak indicator of whether a case can be considered a precedent. This article will treat “referred” as a neutral option that offers neither positive nor negative effect in terms of being a judicial precedent. On this basis, we may further analyse how strong Singapore courts “follow” English decisions (or those of local courts or other foreign countries).

Fourth, in the area of insurance law, it is not uncommon that courts refer to academic books, which are considered secondary materials and have no precedential effect. This article will also analyse how Singapore courts consider academic books. In particular, this article will analyse how many times Singapore courts actually quote texts from a textbook and the doctrine or assertion that the quoted text is about based on an assumption that quoting specific texts mean that a judge confirms with the view (or the description of a doctrine) that an author adopts. Thus, this view might become hard law. Moreover, using simple statistics, we may also see which textbook writers are more highly regarded by Singapore judges. Again, we may further consider whether a book is written by English writers or local writers.

### III. Data and Findings

#### A. General Data and Description

As of the end of 201, there are eighty cases reported in the SLR that includes “insurance” in its subject matter provided by editors of the law report. There is a steady supply of reported insurance cases since 1966; but most decisions were issued after 1990, with 34 cases reported

between 1991 and 2000 and 25 in and after 2000. This coincides with the limit of appeal to the Privy Council in 1989 and its abolition in 1993.<sup>4</sup> From the 80 insurance judgments, there are some interesting observations.

First, of the 80 judgments, 52 (65%) by the High Court and 24 (30%) are issued by the Court of Appeal.<sup>5</sup> There is only 1 decision by the Privy Council. Thus, Singapore's insurance cases are largely decided by local courts rather than by appeals to the Privy Council in England.

Second, a majority of cases involves policies issued in a commercial context. Only 21 out of the 80 judgments (26.25%) involve insurance policies issued on a personal basis (i.e. not commercial). Among all other commercial policies, one thing worth noting is that there are 15 cases about construction of buildings, which occupies a fair share of reported cases (18.75%).

Third, most reported judgments are about so-called indemnity policies, which indemnified an insured's actual losses.<sup>6</sup> Only 2 cases were about life or health policies that are commonly issued to individuals. Among the other 78 cases, 5 are about reinsurance, 14 about motor insurance, 6 about workmen's compensation, 16 about marine policies, 4 about accident policies and 33 about other general property or liability insurance (e.g. theft, fire, flood, etc.).

A cross-examination of the context and type of the insurance policy in dispute shed some lights. Among the 21 cases involving personal insurance policies, 14 are about motor policies. In other words, all motor policies in reported cases are issued to individuals. This is a predictable outcome as purchasing third-party insurance is mandatory under Singapore law.<sup>7</sup> For other policies in the personal context, 4 are about accident and 2 are about life policies. For other commercial policies in reported insurance judgments, 6 of 59 (about 10%) are about workmen's compensation, 16 (about 27%) about marine insurance and over 50% are about general indemnity property insurance policies.

This provides an interesting contrast. On the one hand, a vast amount of insurance policies issued in and premiums collected in Singapore was about life and health policies. According to the Monetary Authority of Singapore, there were a total of 11,764,901 life policies outstanding as of 2010 (and over S\$ 9.21 billion annual premiums paid)<sup>8</sup>, in contrast with a total of S\$ 3.23 billion gross premiums paid for non-life insurance policies as of 2010.<sup>9</sup> However, from reported judgments, only a tiny ratio was about life assurance. This may simply reflect the fact that commercial entities are more likely to bring a lawsuit than retail customers so that it is more likely to have reported judgments on indemnity policies than life policies. However, the shortage of reported judgments on life policies also indicates there is not much development regarding the law of life assurance, which might affect more assured in the market. This does not mean that the law about life policies is so different from property insurance. There are some common issues such as construction of a policy and issues about exclusion clauses. Nonetheless, since there are hardly cases about life policies, there is always room for arguments. This can support the

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<sup>4</sup> See <http://www.singaporelaw.sg/content/LegalSyst1.html#Section1> (accessed 3 Feb 2012).

<sup>5</sup> There are also three by the Federal Court.

<sup>6</sup> *Medical Defence Union Ltd v Department of Trade* [1980] Ch 82, 89 (per Sir Robert Meggry VC).

<sup>7</sup> Motor Vehicles (Third-party Risks and Compensation) Act (Cap 189) s 3.

<sup>8</sup> See [http://www.mas.gov.sg/resource/data\\_room/insurance\\_stat/2010/Life\\_Key\\_Indicators\\_2010.pdf](http://www.mas.gov.sg/resource/data_room/insurance_stat/2010/Life_Key_Indicators_2010.pdf) (last visited 4 March 2012). The figure excludes premiums paid for off-shore insurance policies.

<sup>9</sup> See [http://www.mas.gov.sg/resource/data\\_room/insurance\\_stat/2010/Gen\\_Key\\_Indicators\\_2010.pdf](http://www.mas.gov.sg/resource/data_room/insurance_stat/2010/Gen_Key_Indicators_2010.pdf) (last visited 4 March 2012). The data excludes premiums paid to offshore insurance funds.

existence to the Financial Industry Dispute Resolution Corp (FIDReC) as an alternative dispute resolution body for consumer financial transactions (including insurance policies).

Fourth, the type of disputes and the issues in question also raise some interesting notes. A majority of cases (61 out of 80, 76.25%) are about what this article classifies as “claim” type of disputes, which are cases involving an insured or a third party claiming insurance money from one or more insurers. There are 5 cases about one insurer claiming contribution from another insurer in a double insurance situation. Another 6 cases are about subrogation, where an insurance company attempted to claim compensation from a third party after the insurance company paid out insurance money. It is interesting to note that there were 4 cases about reimbursement of insurance money, whereby an insurance company actually asked an insured or third party to return insurance payments.

Apart from the type of disputes, we may also look at the type of issues or doctrines in litigation. Among all, 34 cases involve arguments about the coverage of a policy, i.e. whether a situation is covered by a policy (but precluding exclusion clauses). Another 13 cases are clearly about exclusion clauses (i.e. what is not covered), 10 about the measure of loss and indemnity and 13 cases contain arguments regarding an insured’s obligation (including premiums, notice, warranties, etc.). If we focus on the 61 judgments of the “claim” type of dispute, over half (32 judgments) involve disputes on the coverage of a policy and another 6 about exclusion clauses alone. Together, over 61% of these “claim type” cases are about examining the scope of an insurance coverage.

The legal implication is that judges must delve into policy terms to determine the exact meaning and scope of an insurance policy because neither the Insurance Act nor the Marine Insurance Act provides much regulation on terms of insurance policies. Thus, most cases are about the interpretation of insurance policies. Since contractual terms may be case-specific, this may imply that judges might not need to cite that many precedents to justify a decision if a dispute is not founded on doctrinal grounds. This may imply that the law does not have a great chance to move forward simply by relying on judgments. If the current state of insurance law is not satisfactory, legislative intervention seems to be a better way. This is something shown by the general picture of Singapore’s insurance cases.

## **B. Total Number of Cases and Other Factors**

We may further examine whether the number of cases cited in a judgment can be explained by other factors. As a whole, the 80 Singapore insurance judgments reported in SLR cite a total of 512 judgments for a total of 596 times. This indicates that a majority of cases cited in these 80 judgments are cited for just once. This probably can be explained by the fact that Singapore is a small state that cannot massively produce judgments that match the number in the UK. Thus, Singapore judges must consider cases from other jurisdictions. English law is the natural source.

Among all, 3 judgments offered no citation of other case at all and the highest in one single judgment was 50<sup>10</sup>; with two other judgments cite over 40 cases.<sup>11</sup> However, on average, each

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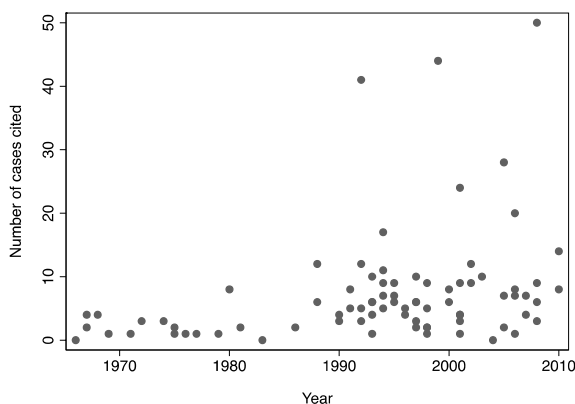
<sup>10</sup> *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (Court of Appeal, Singapore).



Singapore insurance judgment cites 7.45 cases and the median is 5; and the average number of cases cited are 5.45 cases per judgment if we only focus on judgment citing 20 or fewer cases. While the total number of samples is rather limited, the histogram does not suggest a normal distribution. Against this backdrop, there are some points worth noting.

First, we may wonder whether Singapore judges cited more cases as time goes by. For this, the relationship between year and the total number of cases cited can be shown in the chart below:

Chart 1: Year and Total Number of Cases Cited



From the chart, it seems that judgments citing over 20 other decisions only appear after 1990. Regression analysis shows that there is modest relationship ( $\beta = 0.32, p = 0.004$ ). The regression model shows that overall one more year would lead to 0.25 more cases cited. Apparently not all cases cited are about insurance law. We analyse the relationship between the total number of insurance cases cited and year. Similarly, there is a modest relationship between the number of insurance cases cited and year ( $\beta = 0.29, p = 0.008$ ). The conclusion is also supported by comparing the mean of number of cases cited in each decade. Between 1965 and 1980 (inclusive), Singapore judges cite an average of 2.29 cases per judgment. The figure rose steadily from 1981-1990 (4.14 cases per judgment) to 1991-2000 (8.38 cases per judgment) and 2001-2010 (10 cases per judgment). Thus, it seems there is a trend that Singapore judges cited more cases as time goes by, but the increase is not great.

We may further examine the relationship between year and the total number of Singapore cases cited and with the total number of UK cases cited in Singapore insurance judgments. There is a weak-moderate relationship (but statistically significant) for both Singapore cases ( $\beta = 0.33, p = 0.0002$ ) and UK cases ( $\beta = 0.23, p = 0.04$ ). As time goes by, there are more English cases as well as more Singapore cases cited in Singapore judgments. The relationship is stronger for Singapore cases than UK cases. This may be an indication that more local cases will be cited than there is an increase of 0.12 UK cases per year and 0.07 cases per year for local cases. If the result is correct, it means that UK cases account for a bigger share of the increase in citations over the

<sup>11</sup> They are *American Home Assurance Co v Hong Lam Marine Pte Ltd* [1999] 2 SLR(R) 992 (Court of Appeal, Singapore) and *TKM (Singapore) Pte Ltd v Export Credit Insurance Corp of Singapore Ltd* [1992] 2 SLR(R) 858 (High Court, Singapore).

years than Singapore cases. Thus, unless there is a dramatic reverse of the trend, there is no prospect that the number of Singapore cases cited will overtake that of the UK cases. It will be interesting to see whether trend will be reversed in the future and whether other areas of law (eg, contract or tort law) share the similar pattern.

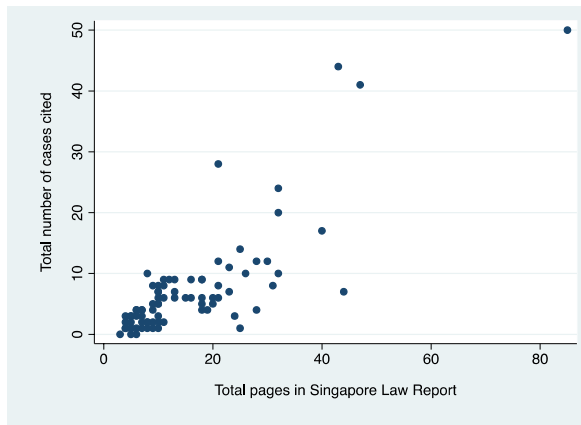
Second, there is no statistically significant relationship between the total number of cases cited and the type of disputes ( $p = 0.44$ ). This is probably due to the fact that the size of the sample is only limited to 80 judgments and over 75% of the judgments are about making insurance claims. Thus, there is no sufficient data to analyse the total number of cases cited for other dispute types.

Third, is the Singapore Court of Appeal more likely to cite more cases than the High Court? Among the 80 judgments, 24 were decided by the Court of Appeal, 52 by the High Court, 3 by the Federal Court and 1 by the Privy Council. By average, the Court of Appeal cites about 9.04 cases per judgment and the High Court cites 7.13 cases per judgment. Thus, on paper it may look like the Court of Appeal would cite more cases than the High Court. However, by applying the Kruskal Wallis test, we found no statistically significant relationship between the two variables if we focus only on judgments of the High Court and Court of Appeal ( $p = 0.65$ ). In fact, the Court of Appeal might have delivered the two insurance judgments containing the highest count of cases cited (which might raise the average higher); but the High Court issued more decisions containing 15 or more cases cited. For a majority of Court of Appeal and High Court cases, the total number of citation is still within the same range. Thus, we may argue that the use of citation does not seem to have relationship with the court that issues a judgment.

Fourth, we may consider whether the total number of cases cited has any relationship with the judge that issues a judgment. However, of the 80 cases, a total of 33 judges delivered judgments. This means that reported insurance cases did not heavily concentrate on a few judges. Among all, Judge LP Thean delivered 8 judgments and Judge Wee Chong Jin delivered 5 out of 80, with Judge GP Selvam and Judge Judith Prakash each had 4. Ten other judges had 3 decisions reported. Due to the small size of the sample and the number of judges involved, an analysis may be meaningless.

Last, it is interesting to see if the number of cases cited has any relationship with the length of a judgment, which this article will simply use the total number of pages in the law report as a benchmark. The scatter plot is showed in the chart below:

Chart 2: Length of a Judgment and the Number of Cases Cited



From the chart, it seems that most judgments are less than 20 pages long and cite less than 10 cases. Robust regression between the total pages of a judgment and the number of cases that this judgment cites suggests a strong correlation with statistical significance ( $\beta = 0.81, p < 0.001$ ). By regression analysis, we may come to the following formula:

$$\text{Total number of citation} = -1.564 + [0.566 * (\text{Total number of pages})]$$

This formula predicts that there would be about roughly 1 case cited in every two pages. We should be cautious in applying this formula to test future cases. On the one hand, the total number of cases cited is not normally distributed. Due to some judgments with a large number of cases cited, the distribution is positively skewed. Thus, while we can use it as a benchmark, we can see it is indeed true that the longer a judgment is more cases are cited in that judgment.

In sum, we find that the total number of cases cited in Singapore insurance judgments seems to have weak correlation with the year of the judgment and longer judgments would cite more cases than shorter ones. However, the total number of cases cited does not seem to have statistically significant relationship with the types of disputes or issues in litigation.

## C. How Dominant English Judgments Are?

Having a rough idea on the background of Singapore's reported insurance judgments, we may further analyse the use of citation by Singapore courts. There are three aspects: judgments, statutes, and books. We will start with judgments.

### 1. Annotation and Jurisdiction

Among the 512 cases cited by Singapore insurance judgments, 363 (70.90%) are decided by English courts and only 81 (15.82%) by local courts. The distribution of 512 cases depending on jurisdiction is illustrated in the table below:

Table 2: Jurisdiction

Jurisdiction	Number	Per cent
Singapore	81	15.82%
UK	363	70.9%
Australia	20	3.91%
US	6	1.17%
New Zealand	6	1.17%
Malaysia	16	3.13%
India	7	1.37%
Canada	9	1.76%
South Africa	1	0.2%
Hong Kong	2	0.39%
Other	1	0.2%
<b>Total</b>	<b>512</b>	<b>100%</b>

From this table, one might reach a quick conclusion that English judgments must be dominant in shaping Singapore's insurance case law. However, the sheer number of English cases cited may create a false impression, given that most insurance judgments did not cite many. To examine how far Singapore follows English law, we must further analyse how these judgments are treated by judges, i.e. whether it is followed, not followed/overruled, distinguished or simply referred.

We will then focus on those cases that have been followed or distinguished. Among the 512 cases cited, 144 cases (28.13%) have been followed by Singapore courts and 69 cases (13.48%) distinguished. Only two cases were clearly not followed (and none are English or Singapore cases)<sup>12</sup> and no case has been overruled in the Singapore insurance judgments.

Does the jurisdiction of a case cited have any relationship with whether it is followed or distinguished? First, whether a particular case is followed has no significant relationship with jurisdiction ( $p = 0.232$ ). Being a UK case also did not change the result ( $p = 0.135$ ). It is the same for Singapore decisions ( $p = 0.833$ ). In addition, whether a case is distinguished also has no statistically significant relationship with whether it is a UK case ( $p = 0.380$ ) or a Singapore case ( $p = 0.081$ ). Thus, we may argue that the jurisdiction is not a predictor of whether a case is followed or distinguished.

In fact, among the 363 cases decided by UK courts, only 109 cases (30.03%) are followed (and 23.49% for non-UK cases) and 52 cases (14.33%) are distinguished. Among the 81 Singapore cases cited, only 22 (27.16%) are followed and 6 (7.41%) are distinguished. Most cases are simply referred.

## 2. Cases with Multiple Citations

As mentioned earlier, 445 cases cited in Singapore insurance judgments are cited only once. Thus, we may further examine the other 67 cases that have been cited for two or more times. Among the 67 cases that were cited more than once, 12 are Singapore cases, 46 are UK cases, 3 are Canadian cases; and Australia and New Zealand each offers two. If we focus on Singapore

<sup>12</sup> They are *Cheltenham & Gloucester plc v Sun Alliance & London Insurance plc* 2001 SC 965; 2001 SCLR 670 and *Saskatchewan Government Insurance Office v Spot Pack* [1957] AMC 655.

cases, 6 (50%) are followed with another 2 distinguished. There is no statistically significant relationship between being a Singapore case and whether such a case is being followed ( $p = 0.316$ ) or distinguished ( $p = 0.155$ ), even when this case has been cited for more than once.

Out of the 46 UK cases that are cited more than once, 31 (67.39%) are followed in Singapore insurance judgments and 16 are distinguished. However, while it seems more likely that a British judgment is followed by Singapore courts if this case has been cited more than once, there is still no statistically significant relationship existing ( $p = 0.239$ ). Of the 16 UK cases being distinguished, there is still no significant relationship ( $p = 0.908$ ), either.

### 3. Insurance Cases Cited

So far, we have not looked at what a cited case is about. We can further focus on those cases that are specifically about insurance rather than other issues such as evidence or procedural rules. This may provide a more accurate indicator of whether Singapore courts follow English courts in insurance law. Among the 512 cases cited, 221 (43.16%) could be safely identified as a case about insurance law and 291 (56.84%) are about other issues. If we analyse the relationship between whether a case has been followed and whether that case is an insurance case, the result shows that there is a statistically significant relationship ( $p < 0.001$ ). In fact, a case is about 2.67 times more likely to be followed by Singapore insurance judgments if the case cited is an insurance case. However, we find no relationship if it is when a case is distinguished ( $p = 0.173$ ).

What is the influence of jurisdiction on whether an insurance case is followed or distinguished by Singapore courts? Out of the 221 insurance cases cited, 170 are UK cases and only 22 are Singapore ones. If we focus on the annotation of a UK insurance case cited, the relation is illustrated in the tables below:

Table 3: Insurance cases cited and UK jurisdiction (Followed)

	Non-UK	UK	Total
Other	33	101	134
Followed	18	69	87
Total	51	170	221

Table 4: Insurance cases cited and UK jurisdiction (Distinguished)

	Non-UK	UK	Total
Other	44	142	186
Distinguished	7	28	35
Total	51	170	221

Our analysis suggests that, among the 221 insurance cases cited in Singapore insurance judgments, we find no relationship between UK jurisdiction and whether an insurance case is followed ( $p = 0.497$ ) or distinguished ( $p = 0.638$ ). The same also holds true for Singapore cases ( $p = 0.876$  for cases being followed and  $p = 0.126$  for cases being distinguished). Thus, the jurisdiction of an insurance case is not a predictor of whether that case is followed or distinguished by Singapore courts. Therefore, though being an insurance case might make it

more likely to be followed in Singapore insurance judgments, so far we have not perceived a relationship with the jurisdiction of a case.

In addition, are insurance cases more likely to be cited more than once? This can be summarised in the table below:

Table 5: Insurance case with multiple citations (followed)

	Non-insurance	Insurance	Total
Other	11	14	25
Followed	12	30	42
Total	23	44	67

It is shown that there is no significant relationship ( $p = 0.20$ ) between being an insurance case and whether it is followed when a case has been cited more than once. For information, there is also no relationship between a cases being distinguished and being an insurance case.

In sum, while the total number of UK cases cited may indicate that English authorities dominate Singapore’s insurance law, statistical analysis suggest that there is no strong relationship between the jurisdiction of a case cited and whether it is followed or distinguished. Most cases are simply referred. However, being an insurance case might help it to be followed (but not when it is distinguished); but again the jurisdiction is not a valid indicator thus far. As there are not too many insurance judgments reported in SLR since 1965, it is sensible for counsels and judges to refer to English decisions. However, though English authorities may not be as dominant as it looks like, local authorities are not much better.

## D. Annotation and Courts Issuing a Decision

This section turns to our second hypothesis: whether decisions cited by higher courts are more likely to be followed or distinguished? For this, we can analyse Singapore and UK decisions separately due to different court structure.

For Singapore cases, of the 81 cases, 31 were decided by Singapore Court of Appeal and 41 by High Court. After analysing these 72 cases and the number of times they are followed, we find no statistical significant relations between Singapore court and whether a case is followed ( $p = 0.340$ ) or distinguished ( $p = 0.362$ ).

For UK cases, we can identify the court for 361 of the 363 cases, including 63 (17.45%) by UK Supreme Court (and former House of Lords), 137 (37.95%) by UK Court of Appeal, 134 (37.12%) by UK High Court, 21 (5.82%) by the Privy Council and 6 by other courts (normally Scottish courts). If we look at the odds, only 26 out of 63 cases (41.3%) decided by the UK Supreme Court (including House of Lords) are followed in Singapore insurance judgments (including one case followed three times). For Privy Council decision, 10 out of 21 (47.6%) are followed. The percentage is lower for Court of Appeal (38 out of 137, 27.7%) and High Court (34 out of 134, 25.3%). If we combine UK Supreme Court and Privy Council decision, 36 out of 84 cases (42.9%) have been followed by Singapore insurance judgments. Thus, in a way, we

may argue that a decision by the top court in the UK is more likely to be followed than High Court or Court of Appeal decisions. This is a statistically significant result ( $\chi^2(2) = 8.76, p = 0.013$ ). However, there is no significant relationship between a Court of Appeal decision and a High Court decision ( $\chi^2(1) = 0.34, p = 0.560$ ). However, if we run the same analysis over cases being distinguished, there is also no such relationship between the court that issues a decision and when that case is distinguished ( $\chi^2(2) = 1.26, p = 0.532$ ).

In addition, if we focus on English cases (excluding Scottish cases), there are some interesting findings. Among the 355 cases that could be identified to be issued by English courts (including Privy Council), we do find that being an insurance case and the court that issues the decision would have a compound effect on whether a case is followed. In short, among the English cases, being an insurance case is 3.2 times more likely to be followed than non-insurance English cases ( $z = 4.6, p < 0.001$ ). For courts, if a decision is issued by higher court (one level up), the chance of being followed is 1.77 times higher ( $z = 3.54, p < 0.001$ ). Combining the two variables, we can explain about 7% of chance of whether a case is followed ( $R^2 = 0.07, p < 0.001$ ).

Nonetheless, no such relationship is found when a case is distinguished. Thus, being a higher or lower court judgment does not bear any relationship with whether it is distinguished. The result cannot be reproduced to local Singapore cases ( $p = 0.281$ ). This is probably due to the fact that the number of local cases cited is limited.

Does the number of times being followed (in absolute terms) have any relationship with the jurisdiction of a cited case? On the one hand, our research shows that there is no relationship between jurisdiction and the number of times being followed ( $p = 0.652$ ). For local cases, 21 out of 81 cases (25.93%) are followed once and 1 case (1.23%) followed for three times. For UK case, 104 out of 363 cases (28.65%) are followed once, 4 cases (1.1%) cited twice and 2 cases (0.55%) cited three times. If we compare the percentage for local and UK cases, it is not that different.

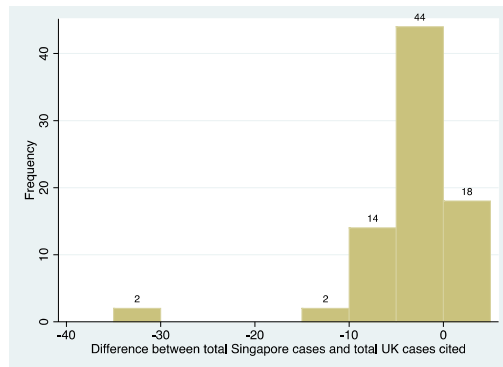
In sum, is a decision issued by higher courts more likely to be followed than one by lower courts? For Singapore cases, we find no such relationship. However, for UK cases, being a case decided by UK Supreme Court increases the likelihood of it being followed; but being a lower court cases does not make it more likely to be distinguished.

## **E. More Local Authorities Cited as Time Goes By?**

While it is understandable that Singapore courts had to cite mostly English authorities at the early stage of its independence, one may wonder whether this trend has been reversed 40 years after independence and 20 years after suspending appeal to the Privy Council. In other words, are there more and more local cases cited by Singapore courts in insurance judgments as time goes by? For this, we will use the ratio and differences between Singapore and local cases cited in Singapore insurance judgments as proxies. Since most cases cited in these 80 insurance judgments were English authorities and the median of total cases cited is merely 5 per judgment, the absolute number of local cases cited may be meaningless. However, two other measures may give us additional benchmarks.

First, we may look at the difference between total Singapore cases cited and total UK cases cited in a Singapore insurance judgment, which is illustrated in the chart below.

Chart 3: Difference between the number of Singapore cases cited and UK cases



From the chart, we may find that only 18 judgments (10%) cite more local cases than UK cases. The result shows that by average a Singapore insurance judgment cites 3.71 less local cases than UK authorities. This means that Singapore courts cited nearly 4 more UK cases than local precedents in insurance judgments. It is also found that the differences had no statistical relationship with the year of a judgment ( $p = 0.332$ ).

If we analyse the mean of the difference between Singapore cases cited and UK cases cited in each decade, we find that the gap grew bigger until 1990s (-1.57 cases for 14 judgments between 1965 and 1980, -3 cases for 7 judgments between 1981 and 1990, -5.52 cases for 34 judgments between 1991 and 2000). The trend seems to be reversed since the turn of the millennium, when Singapore courts cite only 2.64 fewer local cases than UK ones (out of 25 judgments). We will see if the trend will be permanently reversed during the next decade.

Second, we may also observe the ratio of total Singapore cases cited and total number of cases and total number of UK cases cited in a Singapore insurance judgment. The ratio is set to be zero if no UK case is cited by a Singapore insurance judgment. It is interesting to note that 42 judgments (over 50%) cite no Singapore cases at all, but there are 5 insurance judgments (6.25%) that cite only Singapore cases. In contrast, only 11 Singapore insurance judgments (13.75%) cite no UK cases but there are 17 (21.25%) citing only UK cases.

If we analyse the ratio between the total number of Singapore cases cited and the total number of cases cited, we find that there is no significant relationship between this ratio and year of a judgment ( $p = 0.270$ ). There is also no statistically significant relationship for the same ratio regarding UK cases ( $p = 0.688$ ). Thus, overtime, there is no perceived increase or decrease of the share of Singapore cases cited. Nor is it for English authorities. The ratio of Singapore cases cited in an insurance judgment also has no statistically significant relationship with the court that issues the judgment ( $p = 0.546$ ) or the length of a judgment ( $p = 0.496$ ).

Overall, we find that there is no trend indicating that Singapore courts cite more local cases as time goes by. However, there is a sign that the gap is getting narrower in 2000s. Partly, it may be due to the fact that most insurance judgments in SLR are reported after 1990s. Thus, it may take more time to have more insurance cases and for Singapore judges to digest local precedents. We can only see in the future.



## F. Citation and English Statutes

Will more cases cited when interpretation of an English statute? Out of the 80 Singapore insurance judgments, only 16 considered UK statutes and, interestingly, only 7 considered the Marine Insurance Act at all. From this point, an examination of the relationship between the number of cases cited and whether UK statute or Marine Insurance Act is considered by Singapore courts suggests that more cases are cited when UK statutes are considered ( $z = -4.36, p < 0.001$ ). The result is similar when we focus on whether the Marine Insurance Act is considered ( $z = -2.75, p = 0.006$ ). If we run the same analysis of total UK judgments cited, we find that the result is also similar when UK statutes are considered ( $z = -4.78, p < 0.001$ ) or when the Marine Insurance Act is considered ( $z = -3.23, p = 0.01$ ).

In addition, statistics also suggest that the mean of total cases cited is 5.16 per case when there is no UK statute cited and 16.63 cases when UK statutes are considered. Nonetheless, the standard deviation for each group (4.86 when UK statutes are cited and 14.83 when there is none) is substantial so that we should be cautious in reaching a final conclusion. Again, if the Marine Insurance Act is considered, the mean is 12.29 cases cited per judgment (with standard deviation at 10.50) and 4.21 cases cited per judgment when the Marine Insurance Act is not considered.

We may also run the same analysis over the citation of local cases when local statutes are considered. First, only in 21 out of 80 insurance judgments Singapore statutes are considered. Second, in relation to total number of cases cited, we find no statistically significant relationship ( $p = 0.50$ ) when local statutes are considered. However, when local statutes are indeed considered by Singapore courts, the result suggests that more local cases are cited by judges ( $z = -2.71, p = 0.007$ ).

In addition, the mean of total cases cited is 10.90 cases per judgment if a Singapore statute is considered in a judgment (standard deviation at 14.01); in contrast with 6.22 cases cited when no local statute is considered (standard deviation at 6.16). However, the standard deviation may be too substantial to allow us to give a definitive conclusion. For total local cases cited, the mean is 2.71 cases cited per judgment when local statutes are considered (standard deviation at 4.03) and 0.66 cases per judgment when there is none (standard deviation at 0.99).

In sum, it seems that Singapore courts do cite more cases when the court considers English statutes (including the Marine Insurance Act). Nonetheless, we should be cautious in interpreting the result.

## G. Books

In the area of insurance law, judges often refer to textbooks for a legal doctrine or a legal position. For simplicity, we will use the author as a reference if appropriate. Among the 80 Singapore insurance judgments, 48 (60%) did not refer to any textbook at all. Among the remaining 32 judgments (40%) that do refer to books, 20 refer to only one book, 7 refer to two books and 5 judgments refer to three books. No judgment refers to four or more books in the same judgment. If we look at the books referred, *MacGillivray*<sup>13</sup> has been referred in 15

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<sup>13</sup> MacGillivray EJ and others, *Macgillivray on insurance law relating to all risks other than marine* (11th edn, Sweet & Maxwell : Thomson Reuters 2008).

judgments. The runner-up is *Arnould*<sup>14</sup> and books by Professor Malcolm Clarke<sup>15</sup> each has been referred in seven judgments. For local textbooks, Poh Chu Chai<sup>16</sup> has been referred in 6 judgments and Tan Lee Meng<sup>17</sup> in 5 judgments.

We may further examine the books with texts being quoted in a judgment, which may indicate the strength and quality of a book or an author. Among the 32 judgments referring to books, 23 of them quote texts from one or more books (but not all of them). Among all, *MacGillivray* has been quoted nine times and *Arnould* four times. Clarke, Poh Chu Chai and Tan Lee Meng each has been quoted four times. It is perhaps not a surprise that *MacGillivray* has been referred to or quoted for so many times. This article uses statistics to prove the point.

If we focus on judgments issued by Singapore Court of Appeal and High Court, we find no statistically significant relationship between the court and whether a judgment refers to a book ( $p = 0.369$ ) or whether a judgment quotes texts from a book ( $p = 0.369$ ). Interestingly, we find that there is a modest relationship between whether a judgment refers to book(s) and the year of the judgment ( $z = 3.41$ ,  $p = 0.001$ ). The result is the same for those judgments quoting texts from books. Indeed, the first reported Singapore judgment that refers to books is reported in 1986. Thus, earlier cases did not use books for reference at all. We also find that the longer a judgment is the more likely there are book referred and/or quoted ( $z = 3.72$ ,  $p < 0.001$ ). The relationship may not be strong; but it is statistically significant.

In sum, after analysing references to books in Singapore insurance judgments, we find that English books are more popular than two local ones. Whether a judgment refers to a book does not seem to have any relationship with the court issuing the judgment. However, we find that modern judges are more willing to refer to books than earlier ones. The length of a judgment may also be an indicator on whether there is a book being referred or quoted.

## IV. Conclusion: Has Singapore Developed Its Own Insurance Common Law?

After presenting the data, we may return to a final question as a conclusion: has Singapore developed its own insurance common law yet? Probably due to the limit of sample size (only 80 Singapore insurance judgments by the end of 2010), we can hardly find any statistically significant relationship for local cases except we are certain that gradually Singapore judges cite more local cases over time (but it is also true for UK cases). From the 80 Singapore insurance judgments, a total of 512 cases have been cited for a total of 596 times. Though British cases represent 363 of the 512 cases cited, we find that jurisdiction (i.e. being a local or UK case) is not a predictor of whether a case is followed or distinguished. However, if it is a British insurance case, it does raise the likelihood of the case being followed. In addition, we also find that being a case decided by the UK Supreme Court (including the former House of Lords and

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<sup>14</sup> Gilman JCB, Arnould JSLomi and average, *Arnould's law of marine insurance and average* (17th ed. / by Jonathan Gilman ... [et al.]. edn, Sweet & Maxwell 2008).

<sup>15</sup> Malcolm A Clarke, *The law of insurance contracts* (2nd ed. edn, LLP 2002).

<sup>16</sup> Poh Chu Chai, *General Insurance Law* (LexisNexis 2009).

<sup>17</sup> Tan Lee Meng, *Insurance Law in Singapore* (2<sup>nd</sup> edn, Butterworth Asia 1997).

Privy Council), it is more likely to be followed by Singapore courts in insurance cases. However, being a lower court decision does not make it more likely to be distinguished.

In sum, this means that though Singapore courts do cite a lot of English cases (probably also because of the limited size of local case law), English law is not as dominant as it looks like. Nonetheless, to look at the broader picture, it does not mean Singapore has developed its own insurance common law. While we may have found some indicators for an English case to be followed, there is no strong indicator of how likely an English case is distinguished. Largely, Singapore's insurance law is still controlled by old statutes like Marine Insurance Act 1906 and Life Assurance Act 1774. Singapore judges have no choice but to cite English cases as authorities. However, from an analysis of the use of citation, we find that Singapore insurance common law has not developed a different character so far.