6-2024

An updated account on the similar fact rule

Siyuan CHEN
Singapore Management University, siyuanchen@smu.edu.sg

AN UPDATED ACCOUNT OF THE SIMILAR FACT RULE

The number of local decisions on the similar fact rule has increased quite significantly in the last few years. However, fundamental questions, ranging from the foundational (such as the existence or operation of any residual judicial discretion to exclude relevant evidence) to the discrete (such as whether the rule works differently in civil proceedings as compared to criminal proceedings, and how the rule operates *vis-à-vis* related rules of evidence), continue to be answered in rather different, arguably irreconcilable ways by the courts. This article analyses some of the recent key decisions in the light of established precedents and proposes that tweaks around the edges may not suffice to restore coherence between all existing rules pertaining to similar fact. Short of rewriting the statute, the best starting point to take things forward remains appraising the text and structure of the relevant statutory provisions and understanding the principles that undergird them.

CHEN Siyuan*
Associate Professor of Law
SMU Yong Pung How School of Law

I. Overview

1 In evidence law, the similar fact rule essentially guards against the use of evidence of past events to infer and prove things about the present: the more abstract and general the past events are relative to what has allegedly occurred in the present, the less likely it will be admissible; conversely, the more the past events bear similarities to the present, the more likely it will be admissible. To illustrate, suppose a person is charged with outrage of modesty, but he claims that there was no intent. The fact that he had, in the past, committed sexual offences (but not against the present complainant) may not necessarily be admissible because on the basis of this evidence alone, the inference that he had indeed molested the complainant may not be strong. To admit evidence of the past without drawing clear links to the present would be a violation of the rule against propensity or disposition evidence.[1] But if the past

* I thank Ryan Ng and Damien Teo for their assistance and Isabelle Lim and Ivan Tang for their help with the editing. All errors remain mine.

[1] See for instance *Ong Kian Peng Julian v Singapore Medical Council* [2023] 3 SLR 1756 at [41]–[42]. As the court explained in this case (at [41]), "the underlying rationale for the rule excluding similar fact evidence is to guard against reasoning by propensity. The rule

events in question were, instead, complaints filed by the same complainant against the accused for outrage of modesty and the police had issued warnings,[2] that would probably be considered admissible as similar fact because of the greater inferential strength – in other words, a pattern can more easily be discerned and coincidence can more likely be ruled out. This approach in demanding a high degree of similarity before propensity evidence can be admitted as similar fact is consonant with what the relevant provisions in the Evidence Act 1893 ("**EA**") require.

2 First, under s 14, the test is whether the previous conduct is specific enough to warrant inferences on intent.[3] Illustration (*o*) explains as such: "*A* is tried for the murder of *B* by intentionally shooting *B* dead. The fact that *A* on other occasions shot at *B* is relevant as showing *A*'s intention to shoot *B*. The fact that *A* was in the habit of shooting at people with intent to murder them is irrelevant."[4] In other words, a high degree of specificity between the purportedly similar events is required.

3 Secondly, under s 15, the test is whether the previous conduct forms part of a series of similar occurrences to warrant inferences about intent.[5] Illustration (*a*) is particularly instructive: "*A* is accused of burning down *A*'s house in order to obtain money for which it is insured. The facts that *A* lived in several houses successively, each of which *A* insured, in each of which a fire occurred, and after each of which fires *A* received payment from a different insurance office, are relevant as tending to show that the fire was not accidental." Again, a high degree of specificity is needed for this section. It must be borne in mind though that both sections only permit the use of similar fact to

exists to prevent the inference that a person's past conduct increases his disposition or tendency to have committed the offence with which he is now charged".

[2] For present purposes, the difficulties surrounding the legal effect of warnings (whether stern or conditional) have to be discussed on another occasion.

[3] Section 14 states: "Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant."

[4] As will be seen, whether this illustration is meant to be emblematic of the entire section is less certain. For instance, illustration (*c*) states: "*A* sues *B* for damage done by a dog of *B*'s, which *B* knew to be ferocious. The facts that the dog had previously bitten *X*, *Y* and *Z* and that they had made complaints to *B* are relevant."

[5] Section 15 states: "When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant."

prove state of mind (i.e. *mens rea*), and not *actus reus*. The drafter of the EA, Sir James Fitzjames Stephen, confirmed as much in his writings on the Indian Evidence Act of 1872 ("**IEA**"), from which our EA was heavily modelled after.[6]

4 However, in 1996, the Court of Appeal in *Tan Meng Jee v Public Prosecutor*[7] ("***Tan Meng Jee***") held that notwithstanding the requirements of ss 14 and 15 of the EA and that the common law cannot overwrite written law (statutes), the appropriate test when deciding on the admissibility of similar fact was to simply see if the probative value of such evidence outweighed its prejudicial effect ("**PVPE test**"). This was the test used in English common law then, which our apex court deemed fit for direct transplantation.[8]

5 However, a fundamental problem with the PVPE test is that so long as probative value is greater than prejudicial effect by even the slightest, this can lead to the admissibility of similar fact; a transplantation of the PVPE test would either run into conflict with ss 14 and 15 of the EA, or, should it constitute a separate gateway for admitting similar fact, render them completely redundant. Yet, around the same time *Tan Meng Jee* was decided, the High Court in *Lee Kwang Peng v Public Prosecutor*[9] ("***Lee Kwang Peng***") and *Public Prosecutor v Teo Ai Nee*[10] ("***Teo Ai Nee***") held that similar fact can also be admitted via one of the EA's general relevancy provisions in the form of s 11.[11] While this was purportedly done to overcome the aforesaid strictures of ss 14 and 15 regarding *mens rea*/*actus reus* (specifically, that ss 14 and 15 only allow similar fact to be admitted to prove *mens rea*, but not *actus*

[6] See also James Fitzjames Stephen, *A Digest of the Law of Evidence* (Hartford: 1902) at pp 50–76.
[7] [1996] 2 SLR(R) 178.
[8] *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 at [43]. The court referred to the House of Lords decision of *DPP v Boardman* [1975] AC 421. This case (as well as subsequent cases clarifying it) has since been statutorily displaced in the UK by the Criminal Justice Act 2003.
[9] [1997] 2 SLR(R) 569.
[10] [1995] 1 SLR(R) 450.
[11] Section 11 states: "Facts not otherwise relevant are relevant — (*a*) if they are inconsistent with any fact in issue or relevant fact; (*b*) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable." General relevancy provisions refer to ss 6 to 11 of the EA, and they correspond to broad grounds of admissible circumstantial evidence. Specific relevancy provisions – ss 12 to 57 – on the other hand, correspond to exceptions to exclusionary rules. Sections 14 and 15 thus correspond to exceptions to the similar fact rule.

reus),[12] that the court held that the test to be used when applying s 11 was also the PVPE test[13] made ss 14 and 15 even more redundant. Unsurprisingly, this trio of decisions prompted much academic[14] and even judicial critique.[15] What is perhaps surprising is that in the almost 30 years that have lapsed since *Tan Meng Jee*, there remain several interconnected and critical issues surrounding the similar fact rule to be resolved either legislatively or jurisprudentially. This state of affairs has come about despite the extremely patent tension between the PVPE test and the EA (see s 2(2) of the EA, which repeals all common law rules of evidence which are inconsistent with the EA),[16] as well as the conceptual and definitional ambiguities flowing from the PVPE test.

6 What, then, are these issues? One ought to begin with the foundational question of establishing the proper relationship between the PVPE test and the EA. Is the PVPE test an alternative gateway of admissibility to the EA, a set of conditions in addition to the EA's requirements, a set of preconditions before applying the EA, a reflection of what is already in the EA (either in the rules or as an overarching principle), or a formulation of the court's residual discretion to exclude evidence even though the evidence is already admissible under the EA? As will be seen from the case law analysed below, no united conclusion can be drawn with any great confidence. The uncertain relationship between the EA and the common law aside, there are also discrete

[12] See also s 122(5) of the EA, which refers to ss 14 and 15, but not s 11. Section 122 is concerned with the questions that an accused may be asked.

[13] *Public Prosecutor v Teo Ai Nee* [1995] 1 SLR(R) 450 at [79]; *Lee Kwang Peng v Public Prosecutor* [1997] 2 SLR(R) 569 at [41]–[49]. See also *Public Prosecutor v Radhakrishna Gnanasegaran* [1999] SGHC 107 at [124]; *Public Prosecutor v Lee Chee Soon Peter* [2010] SGHC 311 at [32].

[14] See for instance Michael Hor, "Similar Fact Evidence in Singapore: Probative Value, Prejudice, and Politics" [1999] SJLS 48; Eunice Chua, "Recent Developments Concerning Similar Fact Evidence in Singapore" (2018) 30 SAcLJ 367; Chen Siyuan & Chang Wen Yee, "The Use of Similar Fact in Criminal Proceedings: An Updated Framework" [2020] SAL Prac 25; and Jeffrey Pinsler, "Revisiting Similar Fact Evidence in Criminal and Civil Cases and Proposals for Reform" (2021) 33 SAcLJ 531.

[15] See for instance *Public Prosecutor v Mas Swan bin Adnan* [2011] SGHC 107; *The Bunga Melati 5* [2015] SGHC 190.

[16] In this regard see *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [116]: "The starting point is that s 2(2) of the EA provides that any rule of evidence not contained in any written law which is inconsistent with any of the provisions of the EA is repealed. This must mean all inconsistent rules existing at the date of enactment of the EA as only such rules could be repealed." See also *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Ptd Ltd* [2007] 2 SLR(R) 367 at [27]–[31]; *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [75]; *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 at [32]; *Mah Kiat Seng v Attorney-General* [2022] 3 SLR 890 at [54]–[56].

questions regarding the precise meaning of prejudice within the PVPE framework, the degree to which it must be outweighed for similar fact to be admitted, the permissibility of using the EA's general relevancy provisions even when an exception to an exclusionary rule is engaged, the permissibility of using background evidence or related doctrines to bypass the similar fact rule, and whether the similar fact rule works the same way in both civil and criminal proceedings.

7 Given all of this, the objective of this article is twofold. In **Part II**, we will analyse the key case law developments on similar fact subsequent to the trio of *Tan Meng Jee*, *Teo Ai Nee*, and *Lee Kwang Peng* – for which there have been quite a number. As will be made apparent, these developments have not always engaged or had the opportunity to address the aforesaid issues surrounding the similar fact rule. **Part III** of this article thus ponders upon the prospect of the best way forward. Attempting to "reconcile" or "harmonise" all constituents of our similar fact jurisprudence past and present may be quite the challenge – and this is even if the EA is disregarded entirely. Tweaks around the edges may not suffice as the case law has not necessarily pulled in the same direction, as different assumptions have been made at different junctures concerning terminology and definitions, the normative justifications for the similar fact rule and the court's powers, or even the precise scope of the similar fact provisions in the EA. While departing from the status quo may also have ripple effects on contiguous rules both within the EA and in other legislations, one has to commence the root-and-branch surgery at some point, somewhere.

II. Analysis of the key case law developments in recent years

A. Mandating adherence to the text and admissibility paradigm of the EA

8 In *Public Prosecutor v Mas Swan bin Adnan*[17] ("***Mas Swan***"), the two accused persons were charged with drug trafficking. The facts were themselves unremarkable – the question of similar fact arose because there was evidence that they had previously made drug deliveries for their contact using a particular *modus operandi*, and counsel for the accused objected to their admissibility on the basis of the

[17] [2011] SGHC 107.

prejudicial effect of such evidence. What was remarkable was what the High Court said about the Court of Appeal's holdings on the similar fact rule in *Tan Meng Jee*. Specifically, it said that "it is clear that the admissibility of similar fact evidence has to be determined according to the categories of relevance under ss 14 and 15 and *Tan Meng Jee* is inconsistent with the EA in so far as it allows for the exclusion of similar fact evidence that is otherwise deemed relevant under those provisions."[18] In relation to ss 14 and 15, the court further stated that decisions that have required similar facts to be "strikingly similar" before they are admitted would cohere with the high bars set in those two provisions.[19]

9 The upshot of these two points made by the court in *Mas Swan* is that the resolution of any question of similar fact – at least insofar as the proving of state of mind is concerned – is confined to the fulfilment of either s 14 or s 15 of the EA.[20] These sections should not be bypassed by applying the common law PVPE test in lieu, which sets a clearly lower threshold than either section. And if the similar fact evidence passes muster under either s 14 or s 15, there is no residual judicial discretion to exclude the evidence as the EA conceives of relevance and admissibility in an inclusionary and exhaustive manner.[21]

10 A less obvious but nonetheless important implication of *Mas Swan* is that prejudicial effect simply refers to the lack of probative value, rather than something else that is not directly antithetical to probative value.[22] This conclusion is derived from *Mas Swan*'s claim that the PVPE test (in the admissibility sense and not in the sense of

[18] *Public Prosecutor v Mas Swan bin Adnan* [2011] SGHC 107 at [107]. See also Chen Siyuan, "The Judicial Discretion to Exclude Relevant Evidence: Perspectives from an Indian Evidence Act Jurisdiction" (2012) 16(4) *International Journal of Evidence & Proof* 398.

[19] *Public Prosecutor v Mas Swan bin Adnan* [2011] SGHC 107 at [107]–[111]. See also *Tan Swee Wan v Lian Tian Yong Johnny* [2016] SGHC 206 at [45].

[20] For a civil (and recent) decision, see *Bhoomatidevi d/o Kishinchand Chugani Mrs Kaita Gope Mirwani v Nantakumar s/o v Ramachandra* [2023] SGHC 37 at [52]–[57]. See also *Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10 at [32].

[21] See also Vinodh Coomaraswamy, *Report of the Law Reform Committee on Opinion Evidence* (Singapore Academy of Law, 2011) at paras 17 and 30: "The Evidence Act was drafted on Stephen's idiosyncratic view that there should be no distinction between the concepts of relevance and admissibility … The second difference between the Evidence Act and modern evidence law is that the Evidence Act admits only evidence which the Act renders admissible … the Evidence Act establishes the law of evidence in Singapore as a series of *inclusionary rules* with a few exclusionary rules bolted on rather than as a set of exclusionary rules."

[22] See also Chen Siyuan, "Revisiting the Similar Fact Rule in Singapore" (2011) SJLS 553.

exclusion) can only be consistent with ss 14 and 15 of the EA if it sets the threshold at striking similarity. It seems that if prejudicial effect could include non-epistemic considerations such as fairness or protecting the dignity or privacy of the individual, the court would not have drawn the line only at whether there was sufficient probative value. It would probably have suggested that the PVPE test did not just involve a weighing exercise comparable to how a set of scales or a seesaw would work – that is, when one side goes up, the opposing side must inexorably go down commensurately. To the contrary, if prejudicial effect was not the lack of probative value, it would have considered the PVPE test to be more akin to a global assessment of factors not necessarily commensurate to each other (like how the interests of justice test under s 32 of the EA has been interpreted by our courts).[23] But it did not do so.[24]

B. Resurrecting the common law approach

11 *Public Prosecutor v Ranjit Singh Gill Menjeet Singh*[25] ("***Ranjit Singh***") was another case involving drug trafficking. The similar fact in question was about previous statements given by the accused concerning other transactions that suggested he always knew what he was trafficking. Unlike in *Mas Swan*, however, the High Court did not consider it necessary to apply the requirements in s 14 or s 15 of the EA even though the court acknowledged that the similar fact rule was engaged. It was of the view that pursuant to *Tan Meng Jee*, the PVPE test had been "superimposed" onto both provisions.[26] This meant that the court should only need to apply the factors of the cogency or reliability of the similar fact, the strength of inference it provides, and its relevance to determine admissibility.[27] At this juncture however, it is pertinent to note that, in contrast to *Ranjit Singh*, *Teo Ai Nee* did not consider the PVPE test as one of admissibility, but rather as a residual

[23] See for instance *Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 at [105]–[109]. See also *Siemens Industry Software Inc (formerly known as Siemens Product Lifecycle Management Software Inc) v Inzign Pte Ltd* [2023] SGHC 50 at [67]–[69].
[24] See also *ANB v ANC* [2014] 4 SLR 747 at [50]–[53]; *Wan Lai Ting v Kea Kah Kim* [2014] 4 SLR 795 at [18]–[19].
[25] [2017] 3 SLR 66.
[26] *Public Prosecutor v Ranjit Singh Gill Menjeet Singh* [2017] 3 SLR 66 at [17]. See also *Public Prosecutor v Beh Chew Boo* [2020] SGHC 33 at [14]–[18].
[27] *Public Prosecutor v Ranjit Singh Gill Menjeet Singh* [2017] 3 SLR 66 at [17].

discretion predicated on the court's inherent power.[28] This is not a mere semantic difference of no real consequence. By framing the PVPE test as a discretion, as the label suggests, the court has the option not to apply it – and if it does apply the discretion, it is only done at the end and not before the EA is applied (if it even is). Further, the precise words used in *Teo Ai Nee* were "exclude evidence where its probative value is totally disproportionate to its prejudicial effect", suggesting that the mere tipping of the scales in favour of probative value would not suffice, and that the discretion would only be exercised as the exception and not the norm.

12 Notwithstanding *Mas Swan*'s dictum that applying the PVPE test as a residual discretion would not be compatible with the EA, *Teo Ai Nee* might have been on to something. As mentioned, the bars set by ss 14 and 15 of the EA are higher than the PVPE test if one assumes that probative value does not need to greatly outweigh prejudicial effect (per what the English cases actually demanded) and that prejudicial effect only refers to the lack of probative value. If this is so, then: (**a**) applying the PVPE test before s 14 or s 15 would be abjectly pointless, since both provisions set a higher bar to admissibility; (**b**) the same reasoning would apply to the argument that the PVPE test is found within s 14 or s 15; and (**c**) substituting s 14 or s 15 with the less stringent PVPE test would be an impermissible rewrite of the EA. This leaves us with the prospect of applying the PVPE test only after either s 14 or s 15 has been applied. Yet the only way this can be done in any meaningful way is if prejudicial effect means more than just the lack of probative value. Otherwise, similar fact of insufficient probative value would already be caught by the barriers erected by s 14 or s 15, and there is no need for any PVPE test lurking at the tail end since it would serve no function at all (the assumption, of course, is that evidence that does not clear the bar of s 14 or s 15 cannot be "resurrected" by a lower threshold set by the PVPE test, but this has surely to be a safe assumption).

[28] *Public Prosecutor v Teo Ai Nee* [1995] 1 SLR(R) 450 at [79]. In this regard see Chen Siyuan, "Is the Invocation of Inherent Jurisdiction the Same as the Exercise of Inherent Power" (2013) 17(4) *International Journal of Evidence & Proof* 367. The main problem with using inherent power in evidence law discourse is that such power has always made more sense in the contiguous – but distinct – domain of procedural law. That domain governs pre-trial matters, wherethe paramount objective has more to do with case management, efficiency, and procedural fairness, rather than relevance, admissibility, and rights of the parties.

13 The problem is that to date, there have been no similar fact cases that have suggested, for instance, that similar fact that can be admitted via s 14 or s 15 can nevertheless be excluded by reason other than the lack of similarity or lack of clear relevance – both being unmistakably epistemic factors. Cases that have expanded the scope of the PVPE test (as an exclusionary discretion and not as the test for admissibility) to include factors such as reliability or procedural fairness[29] can readily be distinguished on the ground that they were applying the statement-gathering or disclosure provisions of the Criminal Procedure Code 2010 ("**CPC**"), and not the EA.[30] Likewise, the cases on interests of justice referred to earlier that conceptualised the court's discretion to exclude evidence based on a broader range of factors (such as waste of court's time and resources, tendency to confuse, and so on) were referring to s 32 of the EA, which pertains to hearsay evidence. The interests of justice test, for better or for worse, was only added via the 2012 amendments to the EA to s 32 and s 47, and nowhere else in the statute. More tellingly, there have not been any cases that have held that interests of justice can be applied to other EA provisions,[31] to say nothing about how the test is not only meant to be an exclusionary discretion, but also meant to be used sparingly and not by default.[32]

14 In any case, *Ranjit Singh* is notable for a few other reasons. First, the court did not appear to reject the Prosecution's submission that they could rely on ss 6[33] and 9[34] of the EA to admit the disputed

[29] See for instance *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205; *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557; *Chang Peng Hong Clarence v Public Prosecutor* [2023] SGHC 225.

[30] And even if reliability is considered relevant to probative value per *Tan Meng Jee*, if all it means is the strength of inference to be drawn, then that is already covered by ss 14 and 15 of the EA, and should not be reintroduced at the end as part of an exclusionary discretion.

[31] The interests of justice test now features in many provisions of the Rules of Court 2021, but as just mentioned, subsidiary legislation is more concerned with pre-trial proceedings and case management. The domain governing admissibility of evidence at trial continues to be that of the EA (and should remain so).

[32] *Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 at [105]–[131].

[33] Section 6 states: "Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places."

[34] Section 9 states: "Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose."

evidence.[35] Like s 11, these are general relevancy provisions not intended to be used when exclusionary rules are engaged – again, otherwise all specific relevancy provisions become redundant given the breadth of the general ones. And while there is some case law suggesting that general relevancy provisions can also be subject to the PVPE test,[36] this neither changes the fact that specific relevancy provisions can be rendered otiose as a result – a phenomenon not witnessed in the realms of hearsay and opinion, it should be noted[37] – nor does it shed light on whether the PVPE test is a residual discretion or an admissibility test that replaces the EA provision in question.

15 Secondly and relatedly, the court referred to the Court of Appeal decision of *Ng Beng Siang v Public Prosecutor*[38] ("***Ng Beng Siang***"), seemingly agreeing with the Prosecution's characterisation that similar fact can be admitted as long as it is not for the purposes of showing propensity to commit an act but is being adduced for the more limited purpose of providing the court with a complete account of the facts.[39] Indeed, earlier cases such as *Public Prosecutor v Puroshothaman a/l Subramaniam*[40] ("***Puroshothaman***") take the view that the issues surrounding admitting evidence in this way is also to be resolved using the PVPE test.[41] But as just mentioned, even if the general relevancy provisions can be used to admit similar fact, one should not go one step further and reduce the inquiry (again) to the PVPE test. The EA would (and indeed already has in my view) become meaningless this way, unless the courts are prepared to consider if prejudicial effect has a wider meaning than the lack of probative value (or similarity in the context of similar fact). This may not be such a fanciful idea if one is prepared to cast the net wider. Within Part 1 of the EA (which governs relevancy), there are several provisions that are clearly concerned with

[35] *Public Prosecutor v Ranjit Singh Gill Menjeet Singh* [2017] 3 SLR 66 at [12]–[17].
[36] See for instance *Michael Anak Garing v Public Prosecutor* [2017] 1 SLR 748.
[37] See Chen Siyuan, Chai Wen Min & Louis Lau, "The Use of Hearsay in Criminal Proceedings: An Updated Framework" (2021) SAL Prac 8; Chen Siyuan, Koh Zhi Jia & Joel Soon, "The Use of Expert Opinion Evidence in Criminal Proceedings: An Updated Framework" (2021) SAL Prac 27. See also *Creative Technology Ltd v Huawei International Pte Ltd* [2017] SGHC 201.
[38] [2003] SGCA 17.
[39] *Public Prosecutor v Ranjit Singh Gill Menjeet Singh* [2017] 3 SLR 66 at [18]–[22]. See also *Bong Sim Swan Suzanna v Public Prosecutor* [2020] SGHC 15 at [26]–[27]; *Public Prosecutor v Sritharan K Raja Rajan* [2020] SGHC 121 at [26]; *Public Prosecutor v Saridewi bte Djamani* [2022] 4 SLR 872 at [33]–[35].
[40] [2014] SGHC 215.
[41] *Public Prosecutor v Puroshothaman a/l Subramaniam* [2014] SGHC 215 at [61]–[62].

more than just relevance. Examples include the good character provision in s 55[42] and the without pre-trial negotiations provision in s 23.[43] The former was included by Stephen to level the playing field for accused persons in criminal proceedings,[44] while the latter is meant to promote the policy of unfettered settlement talks.[45] There are also provisions outside Part 1 which show that relevance is not the only value to be pursued. Section 154A, for instance, stipulates that the court can restrict the questions that may be asked of any alleged victim of a sexual offence in cross-examination. All of this shows, arguably, that there is some room for a broader range of factors to be considered when evaluating prejudicial effect.[46] Yet, save for a possible exception that will be highlighted below, no Singapore court has recognised this with regard to similar fact.

C. Multiple approaches in civil proceedings

16 Lest it be forgotten that ss 14 and 15 of the EA (and s 11 for the matter) do not distinguish between criminal and civil proceedings, is the law on similar fact any clearer for civil cases? The jurisprudence in the immediate years that followed *Tan Meng Jee* had perceptibly different formulations of the rule.

17 In *Hin Hup Bus Service (a firm) v Tay Chwee Hiang*[47] ("***Hin Hup***"), the High Court, while referring to ss 14 and 15 of the EA and *Tan Meng Jee*, also cited this passage from the English case of *Mood Music Publishing Co Ltd v De Wolfe*[48] ("***Mood Music***"): "In civil cases the courts will admit evidence of similar facts if it is logically probative, that is, if it is logically relevant in determining the matter which is in issue: provided that it is not oppressive or unfair to the other side: and

[42] Section 55 states: "In criminal proceedings, the fact that the person accused is of a good character is relevant."
[43] Section 23(1) states: "In civil cases, no admission is relevant if it is made – (a) upon an express condition that evidence of it is not to be given; or upon circumstances from which the court can infer that the parties agreed together that evidence of it should not be given."
[44] See also James Fitzjames Stephen, *A Digest of the Law of Evidence* (Hartford: 1902) at pp 237–242.
[45] *Leong Quee Ching Karen v Lim Soon Huat* [2023] SGHC 234 at [24]–[26].
[46] What, indeed, are the values that guide the EA? See Chin Tet Yung, "Remaking the Evidence Code: Search for Values" (2009) 21 SAcLJ 52.
[47] [2006] 4 SLR(R) 723.
[48] [1976] Ch 119.

also that the other side has fair notice of it and is able to deal with it."[49] If this was meant to be the test for similar fact in civil cases, it appeared to be a modification of the PVPE test, in that prejudicial effect is not about the lack of probative value but the lack of adequate notice to the other side that similar fact is being used.

18 Moreover, whereas there was some doubt as to whether probative value in the context of criminal cases was to be answered by reference to s 14 or s 15, by referring to *Mood Music*, the court in *Hin Hup* seemed to equate probative value with mere logical relevance. Though not cited in *Hin Hup* itself, this would also have been the position of the 2005 English decision of *O'Brien v Chief Constable of South Wales Police*.[50] Plainly, however, both English cases would be flatly contradicted by the specificity requirement in s 14, the series requirement in s 15, or the high probability/improbability requirement in s 11. That the facts in *Hin Hup* – a driver appeared to be getting into a series of coincidental accidents while committing insurance fraud – were pretty much on all fours with one of the illustrations of s 15[51] simply made the court's reliance on *Mood Music* more curious.

19 Just as curious was the subsequent decision of *Rockline Ltd v Anil Thadani*[52] ("***Rockline***"), wherein the High Court had to consider if the defendants should be allowed to expunge passages from the affidavits of two of the plaintiff's witnesses on the ground that those passages violated the similar fact rule.[53] The court first noted that ss 14 and 15 of the EA were "more generous" than the common law PVPE test.[54] How this is possible either as a matter of the plain text of the provisions or other judicial interpretations of them is unclear, as the court did not elaborate. The court then echoed *Hin Hup* – albeit without citing it – that the similar fact rule would be applied less strictly in civil

[49] *Hin Hup Bus Service (a firm) v Tay Chwee Hiang* [2006] 4 SLR(R) 723 at [40], citing *Mood Music Publishing Co Ltd v De Wolfe* [1976] Ch 119 at 127.
[50] [2005] UKHL 26.
[51] As stated at para 3 above, Illustration (*a*) of s 15 states: "*A* is accused of burning down *A*'s house in order to obtain money for which it is insured. The facts that *A* lived in several houses successively, each of which *A* insured, in each of which a fire occurred, and after each of which fires *A* received payment from a different insurance office, are relevant as tending to show that the fire was not accidental."
[52] [2009] SGHC 209.
[53] See also *Ng Kong Yeam (suing by Ling Towi Sing (alias Ling Chooi Seng) v Kay Swee Pin* [2019] SGHC 21.
[54] *Rockline Ltd v Anil Thadani* [2009] SGHC 209 at [4].

cases as compared to criminal cases.[55] Why this should be the case is also unclear, as the court also did not elaborate on this. What we do know is that the Court of Appeal in *ANB v ANC*[56] has cast strong doubt on whether there should be too universal a distinction drawn between civil and criminal cases when the PVPE test is being applied (though it should be noted that that case did not involve similar fact).[57]

20 A more recent authority to have substantially discussed the similar fact rule in civil cases is *Jason Grendus v Stephen David Lynch*[58] ("***Jason Grendus***"). There, the plaintiff lost money in investments he made into a company. He alleged that the defendant was part of a conspiracy to defraud him. He wanted to call a witness who also lost money to investments in the same company. The High Court began with the preliminary observation that the PVPE test exists not only in relation to similar fact in civil and criminal cases, but in other exclusionary rules as well.[59] What is significant is that the court characterised the PVPE test as a residual discretion, and said that for evidence to be admitted as similar fact, either s 14 or s 15 of the EA had to be satisfied first, and (in contradistinction to *Rockline*) both provisions posed a higher barrier to admissibility.[60] Finally, the court was of the view that evidence that cannot be admitted as similar fact under s 14 or s 15 should not be admissible under s 11.[61] Considering that the only cases thus far that have applied s 11 to admit similar fact are criminal ones, is the position now that civil cases would be treated differently? How would this comport with the clear text of s 11 of the EA (or ss 14 and 15 for the matter)?

D. Odds and ends in two recent decisions

21 We round up the survey of the case law with some of the latest pronouncements. In *Ong Kian Peng Julian v Singapore Medical Council*[62] ("***Julian Ong***"), the General Division of the High Court (with

[55] *Rockline Ltd v Anil Thadani* [2009] SGHC 209 at [5]. See also *Liu Tsu Kun v Tan Eu Jin* [2017] SGHC 241 at [70].
[56] [2015] 5 SLR 522.
[57] *ANB v ANC* [2015] 5 SLR 522 at [28]–[31]. See also *Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 at [110].
[58] [2021] SGHC 191.
[59] *Jason Grendus v Stephen David Lynch* [2021] SGHC 191 at [228].
[60] *Jason Grendus v Stephen David Lynch* [2021] SGHC 191 at [229]–[237].
[61] *Jason Grendus v Stephen David Lynch* [2021] SGHC 191 at [239]. See also *The Bunga Melati 5* [2015] SGHC 190 at [99]–[100].
[62] [2023] 3 SLR 1756.

a three-judge coram) had to consider if two doctors were guilty of breaching ethical guidelines when one of them had allegedly introduced a female patient to the other so that he could have sex with her. At issue was a series of text messages between the two doctors discussing their sexual escapades as well as the exchange of contact information of women in order for either of them to attempt to engage in sexual relations with them. The court cited *Tan Meng Jee* as well as *Muhammad Abdul Hadi bin Haron v PP*[63] ("***Muhammad Abdul Hadi***") for the proposition that the similar fact rule exists to guard against reasoning by propensity, as well as to prevent the inference that a person's past conduct increases his disposition or tendency to have committed the offence with which he is now charged.[64] The court then said that propensity evidence can be admitted under s 14 or s 15 of the EA as long as the PVPE test is satisfied.[65] While it was unclear (in contrast to *Jason Grendus*) whether the court meant that the PVPE test is only meant to act as a residual discretion, or that it should be applied in place of s 14 or s 15 to determine admissibility,[66] the court did not consider the messages to be resolved by a similar fact analysis. Rather, they were of the view that the messages provided context within the meaning of s 9 of the EA, though they stopped short of suggesting that s 9 could also be superseded by an application of the PVPE test.[67]

22 Some of these ideas were expressed as well in a criminal case. In *Sa'adiah bte Jumari v PP*[68] ("***Sa'adiah***"), the accused was charged with administering poison to two babies. A couple of months before she was investigated for this, she had made a police report, claiming that she was the victim of a sexual assault. She took medical tests for this purpose, providing blood and urine samples. When these samples were used to show that the drugs in her toxicology report were also found in

[63] [2021] 1 SLR 537. See also *Chandroo Subramanian v PP* [2021] SGCA 110 at [58]–[59].
[64] *Ong Kian Peng Julian v Singapore Medical Council* [2023] 3 SLR 1756 at [41].
[65] *Ong Kian Peng Julian v Singapore Medical Council* [2023] 3 SLR 1756 at [42]. See also *PP v Muhammad Shafiq bin Shariff* [2021] 5 SLR 1317 at [87]–[88]; *PP v Tan Yi Rui Tristan* [2023] SGHC 173 at [102]–[103].
[66] As to the difference between framing the PVPE test as an admissibility question versus an exclusionary question, see Chen Siyuan, "Redefining Relevancy and Exclusionary Discretion in Sir James Fitzjames Stephen's Indian Evidence Act of 1872" (2014) 10 *International Commentary on Evidence* 1.
[67] *Ong Kian Peng Julian v Singapore Medical Council* [2023] 3 SLR 1756 at [46]. See also *Ong Sock Hung v PP* [2005] SGHC 95 at [42]–[44]; *Mohammad Farid bin Batra v PP* [2021] SGCA 58 at [12]–[20].
[68] [2023] 3 SLR 191.

the blood of one of the babies, she argued that the medical tests should not be admitted as they did not fall under s 14 or s 15 of the EA. The High Court rejected this argument, agreeing with the Prosecution that similar fact "relates to circumstances in which an accused person acts on occasions other than the one which gave rise to the charged offence, which is sought to be admitted to prove the guilt of the accused … [and] consists of conduct that is not specifically connected with the facts in issue (which falls under ss 6–10 of the EA …), but which is merely similar in nature to those facts in issue."[69] It added that the "rule against similar fact evidence is therefore concerned with the use of such evidence in an impermissible way, i.e., to infer from a person's past crimes that he has a propensity or tendency to commit similar crimes … the purpose for which the evidence is sought to be admitted is crucial".[70] In light of these points, the court opined that the disputed evidence was admissible under ss 7[71] and 9 of the EA.[72]

23 As for the court's exclusionary discretion (which it referred to as the PVPE test), the court described it as being residual in nature and founded on the common law.[73] To the extent that it said that prejudicial effect includes factors such as unlawfulness in procuring the evidence and bad faith,[74] at first blush this may give the impression that the obstacle posed by s 2(2) of the EA can be avoided – here, recall that the court in *Mas Swan* and a whole string of cases before and after it had said that any residual discretion to exclude evidence already found relevant under the EA would be a violation of s 2(2). By including non-relevancy factors (unlawfulness and bad faith) into the PVPE test, this common law discretion would not be in a direct clash with the EA (since it does not change the threshold for relevancy), but in supplementation of it (by introducing non-epistemic factors for the purpose of exclusion). Should it matter that the decisions the court in *Sa'adiah* cited in support of this formulation of the PVPE test were, strictly speaking, about the

[69] *Sa'adiah bte Jumari v Public Prosecutor* [2023] 3 SLR 191 at [65]. See also *Public Prosecutor v Khoo Kwee Hock Leslie* [2019] SGHC 215 at [7] and [37]; *Public Prosecutor v Azlin bte Arujunah* [2020] SGHC 168 at [8]–[10].
[70] *Sa'adiah bte Jumari v Public Prosecutor* [2023] 3 SLR 191 at [65].
[71] Section 7 states: "Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction, are relevant."
[72] *Sa'adiah bte Jumari v PP* [2023] 3 SLR 191 at [66].
[73] *Sa'adiah bte Jumari v Public Prosecutor* [2023] 3 SLR 191 at [68]. See also *Public Prosecutor v Zamri bin Mohd Tahir* [2017] SGHC 79 at [27].
[74] *Sa'adiah bte Jumari v Public Prosecutor* [2023] 3 SLR 191 at [69].

CPC and not the EA? Or can one consider *Sa'adiah* to be the first EA case that has broken the mould and is inviting subsequent cases to think beyond relevance even when applying the PVPE test to a similar fact analysis?[75]

III. Is there any clear way forward?

24 Based on what we have covered above, despite the initial promise of maintaining fidelity to the EA shown in *Mas Swan*, the current law on similar fact remains rather unsettled with respect to the issues earlier identified, and can be summarised as follows (to help with visualisation, the final page of this article also contains a table reflecting the possible divergences in the case law):

(a) As a starting point, propensity reasoning, without more, is generally inadmissible. But this may well be the only point of agreement between the rules of the common law and the provisions in the EA, or as between the cases interpreting the EA's provisions on similar fact. Beyond this point, multiple possibilities abound.

(b) If evidence is being adduced as similar fact to prove state of mind, there are cases that: (**i**) require either s 14 or s 15 of the EA to be fulfilled; (**ii**) allow the common law PVPE test to be used instead (in some cases stating that probative value in this context refers to strength of inference, cogency, and relevance); (**iii**) claim that the PVPE test can co-exist with ss 14 and 15 if the threshold of the test is striking similarity; (**iv**) consider the PVPE test to be a residual discretion; and (**v**) consider any residual discretion (a least with respect to ss 14 and 15) to be incompatible with the EA by virtue of s 2(2).

(c) If evidence is being adduced as similar fact to prove *actus reus*, there are cases that: (**i**) permit the use of s 11 of the EA to do this; (**ii**) effectively equate s 11 with the PVPE test, though it is unclear if the test is also used as an exclusionary discretion at the end; and (**iii**) cast doubt that

[75] See also *Public Prosecutor v BZT* [2022] SGHC 91.

s 11 of the EA is meant to be used this way. (It is perhaps telling – and not a coincidence – that when Stephen tried to improve on the IEA to present to the English government for consideration, he removed the equivalent of s 11.)

(d) The meaning of prejudicial effect in the PVPE test, insofar as similar fact is concerned, has been singularly limited to the lack of relevance or similarity (as compared to non-epistemic values such as privacy and dignity of the individual), and this results in the PVPE test operating like a set of scales in which directly opposing values are on each end. In contexts outside similar fact, however, prejudicial effect also refers to the unreliability of the evidence (and possibly illegality and bad faith as well), while as regards the interests of justice test (in the sense of s 32 of the EA), procedural fairness and efficiency are part of the multi-factorial, globalised assessment. The degree to which prejudicial effect must be outweighed before the evidence can be admitted as similar fact is also a tad inconsistent.

(e) In terms of using general relevancy provisions to adduce evidence as similar fact, there are cases that: (**i**) allow s 11 to admit similar fact to prove *actus reus*; (**ii**) cast doubt on whether s 11 can be used this way; (**iii**) allow general relevancy provisions (such as ss 6 and 9) to be used to admit background evidence; (**iv**) use only the PVPE test to admit background evidence; (**v**) suggest that the general relevancy provisions can also be subject to the PVPE test (as an exclusionary discretion); and (**vi**) use the general relevancy provisions only if the evidence is better characterised as non-similar fact (in other words, the precise purpose of admitting the evidence is imperative).

(f) Although ss 11, 14, and 15 do not distinguish between civil and criminal proceedings, there are cases that: (**i**) claim that the similar fact rule is exercised less stringently in civil cases; (**ii**) claim that this is not a universal distinction; and

(**iii**) apply the English common law position in lieu of any of the EA provisions.

25 In my view, the critical question to confront from the outset is this — what exactly does the PVPE test (whether as an admissibility test or as an exclusionary discretion) add to the EA? It is challenging enough, as it were, to ensure that s 2(2) of the EA is not breached when importing common law rules of evidence (which is what the PVPE test is, even if it is framed as part of the court's inherent power).[76] Yet the endeavour becomes superfluous when one is reminded of the high and clear degree of similarity required by both ss 14 and 15 of the EA when what would otherwise be propensity evidence is being adduced as admissible similar fact (in this regard, the common law labels of striking similarity, cogency, and strength of inference do no better than the text, explanations, and illustrations in ss 14 and 15). If the *raison d'etre* of why the similar fact rule exists is to guard against unduly abstract and evidence of misleading inferential value, ss 14 and 15 of the EA discharge that manifestly. The distinctions drawn in the case law between civil and criminal cases also become unnecessary in the light of what is already in ss 14 and 15 since both types of proceedings are catered to in the text.

26 Unshackling ourselves from the misconceived PVPE test, whether as an admissibility framework or as a residual discretion (and whether premised on the common law or inherent powers of the court), would restore much needed coherence and internal consistency for so long as the EA remains the way it is. Indeed, if the concern is that prejudicial effect should go beyond considerations of relevance/similarity, it needs to be made clear whether the fundamentals of the admissibility paradigm of the EA need to be reformulated to accommodate a residual discretion. This can be done legislatively or through the case law. Once this is done, the second step will be akin to what was done to ss 32 and 47 of the EA when the interests of justice discretion was introduced via a legislative amendment: either as a freestanding discretion that applies to all relevancy provisions is introduced – while at that, the general relevancy provisions can either be deleted, or clarified that less weight may be given to evidence admitted under these wide gateways – or as a discrete discretion with factors

[76] See also Ho Hock Lai, "An Introduction to Similar Fact Evidence" (1998) 19 *Singapore Law Review* 166.

unique to similar fact (such as privacy and dignity of the individual, which in turn would give the EA a broader range of values to stand on). Doing either of this also minimises the problems of simply recharacterising potential propensity evidence as well as using similar fact to prove *actus reus* via a backdoor.[77]

27 If one were, however, more minded to take a sledgehammer to our antiquated EA and rework everything related to similar fact to really ensure that only the most relevant of evidence is admissible, there is no paucity of model legislation (in relation at least to criminal proceedings). New Zealand's Evidence Act 2006 ("**NZEA**") offers a very intricate, all-encompassing framework on when propensity evidence can be offered; the gateways are explicit, obviating the prospect of recharacterising evidence. Section 43(1) starts with the simple enough premise that propensity evidence may be offered "if the evidence has a probative value in relation to an issue in the dispute in the proceeding which outweighs the risk that the evidence may have an unfairly prejudicial effect on the defendant." Section 43(3) then elaborates on some factors the judge may consider when assessing probative value: "(a) the frequency with which the acts, omissions, events, or circumstances that are the subject of the evidence have occurred; (b) the connection in time between the acts, omissions, events, or circumstances that are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried; (c) the extent of the similarity between the acts, omissions, events, or circumstances that are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for which the defendant is being tried; (d) the number of persons making allegations against the defendant that are the same as, or are similar to, the subject of the offence for which the defendant is being tried; (e) whether the allegations described in paragraph (d) may be the result of collusion or suggestibility; (f) the extent to which the acts, omissions, events, or circumstances that are the subject of the evidence and the acts, omissions, events, or circumstances which constitute the offence for

[77] Alternatively, at the risk of reintroducing the limitations of the second category in *Makin v Attorney General for New South Wales* [1894] AC 57, if *actus reus* is in issue, similar fact may be admitted as rebuttal evidence (which is essentially also what s 11 of the EA serves as).

which the defendant is being tried are unusual."[78] By any measure, these factors provide a more robust framework than the nebulous, redundant, tautological, and reductive PVPE test.

28 It must be kept in mind, however, that the NZEA does not take an inclusionary approach to relevance/admissibility like the EA, and that it is also subject to two general clauses without equivalents in the EA. The first is s 6, which stipulates that the purpose of the NZEA is to help the just determination of proceedings by, among others, promoting rules of evidence that recognise the importance of the rights affirmed by the New Zealand Bill of Rights Act 1990[79] and promoting fairness to parties. The second is s 8, which stipulates that in any proceeding, the judge must exclude evidence if its probative value is outweighed by the risk that the evidence will have an unfairly prejudicial effect on the proceeding or needlessly prolong the proceeding; further, in determining whether the probative value of the evidence will have an unfairly prejudicial effect on a criminal proceeding, the judge must take into account the right of the defendant to offer an effective defence.[80]

29 Australia's Commonwealth Evidence Act 1995 ("**CEA**") takes almost as intricate an approach as the NZEA but does not consolidate the key rules into one main provision. The first main provision is s 97, which states that evidence of "the character, reputation or conduct of a person, or a tendency that a person has or had, is not admissible to prove that a person has or had a tendency (whether because of the person's character or otherwise) to act in a particular way, or to have a particular state of mind unless (a) the party seeking to adduce the evidence gave reasonable notice in writing to each party[81] … and (b) the court thinks that the evidence will, either by itself or having regard to other evidence … have significant probative value."[82] The second main provision is s

[78] Section 43(4) then states that when assessing prejudicial effect, the judge must consider, among any other matters, whether the evidence is likely to unfairly predispose the fact-finder against the defendant, and whether the fact-finder will tend to give disproportionate weight in reaching a verdict to evidence of other acts or omissions.

[79] Suffice to say for now that this covers a broader range of rights of than the Singapore Constitution, such as minimum standards of criminal procedure (Art 25) and the right to justice (Art 27).

[80] In this regard see New Zealand Law Commission, *The 2013 Review of the Evidence Act 2006 – Report 127* at Chapter 6.

[81] The court can dispense with this requirement under s 100.

[82] Section 110 states that the tendency rule does not apply to evidence adduced by a defendant to prove that he is a person of good character. Section 111 then states that the

98, which states that evidence that "2 or more events occurred is not admissible to prove that a person did a particular act or had a particular state of mind on the basis that, having regard to any similarities in the events or the circumstances in which they occurred, or any similarities in both the events and the circumstances in which they occurred, it is improbable that the events occurred coincidentally unless (a) the party seeking to adduce the evidence gave reasonable notice in writing to each party[83] … and (b) the court thinks that the evidence will, either by itself or having regard to other evidence … have significant probative value." Finally, s 135 provides that the court "may refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might: (a) be unfairly prejudicial to a party; or (b) be misleading or confusing; or (c) cause or result in undue waste of time"; in criminal proceedings, s 137 provides that "the court must refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to the defendant." Just like the NZEA, however, the CEA adopts an exclusionary, and not inclusionary scheme towards relevance/admissibility.

30 To conclude, leaving the law as it is, given what has been surveyed above, cannot be satisfactory as too much is up in the air. This article's proposed interim steps to fix the root causes, as well as a glimpse of what a properly thought-out framework for regulating similar fact might look like, would hopefully animate future developments in this area of evidence law.

tendency rule does not apply to evidence of a defendant's character if (a) the evidence is evidence of an opinion about the defendant adduced by another defendant; (b) the person whose opinion it is has specialised knowledge based on the person's training, study or experience; and (c) the opinion is wholly or substantially based on that knowledge."

[83] The court can dispense with this requirement under s 100.

Appendix – Table reflecting possible divergences in the case law

Can the PVPE test be applied in lieu of s 11, s 14, or s 15 of the EA		
Yes	No	Unclear
Tan Meng Jee *Puroshothaman* *Ranjit Singh* *Zamri* *Muhammad Shafiq* *Sritharan* *Julian Ong*	*Mas Swan* *Rosman* *Muhammad Abdul Hadi* *Jason Grendus* *Bhoomatidevi*	*Hin Hup* *Beh Chew Boo* *Tan Swee Wan* *Chandroo* *Tristan Tan*
Is the PVPE test a residual discretion/is there any discretion		
Yes	No	Unclear
Teo Ai Nee *Zamri* *Jason Grendus* *Sa'adiah*	*Mas Swan* *Muhammad Shafiq*	*Lee Kwang Peng* *Rockline* *Peter Lee* *Julian Ong* *Tristan Tan*
What does prejudicial effect refer to (within similar fact jurisprudence)		
Only lack of relevance/similarity	Includes unfairness and unreliability	Includes procedural fairness
Tan Meng Jee *Peter Lee* *Ranjit Singh* *Zamri* *Rosman* *Michael Anak Garing* *Muhammad Shafiq*	*Sa'adiah* *PP v BZT*	*Hin Hup*
Can s 11 of the EA be used to prove similar fact		
Yes	No	Unclear
Teo Ai Nee *Lee Kwang Peng* *Radhakrishna* *Peter Lee*	*Jason Grendus*	*The Bunga Melati 5*
Can other general relevancy provisions of the EA be used to prove similar fact		
Depends	No	Unclear
Ranjit Singh *Michael Anak Garing*	*Leslie Khoo* *Sa'adiah* *Julian Ong*	*Ng Beng Siang* *Ong Sock Hung* *Azlin* *Sritharan* *Suzanna Bong* *Saridewei*

Does the similar fact rule work differently in civil cases		
Yes	No	Unclear
Hin Hup *Rockline*	*Liu Tsu Kun*	*Jason Grendus*