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The ideals of law in a health crisis: Singapore's legislative responses to COVID-19

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Introduction

Situations like the COVID-19 pandemic pose a dilemma. One might argue that such a crisis is a time for people to sacrifice their legal rights for the common good and submit to heavy restrictions on one's liberties, surrendering individual liberties to a benevolent, though powerful, state. On the other hand, for every situation in history where an emergency has required people to accept such restrictions, there are many more situations in which an unscrupulous government has used a pretend emergency, or a real but exaggerated one, as an excuse to arrogate to himself sweeping arbitrary powers and refuse to let go.

In seeking to guard against the latter risk, it is necessary to remember the importance of the principle of the *rule of law*. The precise meaning of that term is contentious, but, at its heart, the rule of law requires that society be ruled not by the desires of officials, but rather by law. Officials are not free to just do anything; they can only do what the law empowers them to. If left to their own devices, officials, like anybody, could change their wishes at the drop of a hat, and without telling anyone; this could lead to inconsistency in decision-making. Worse, it would be difficult for people to plan their lives, because nobody would be able to tell precisely what was or was not allowed or how one would be treated by the state. By contrast, laws are supposed to be stable, be accessible to anyone, and operate in a predictable, principled and non-arbitrary manner – these values can be said to make up the core of the rule of law.[468]

A related ideal is what this chapter will call the *principle of proportionality*: a law should ideally interfere with certain liberties – such as the freedom to move around as one pleases – as little as possible. Of course, some interference is often justified for a valid purpose, such as protecting public health; but even then, the interference should not be greater than what is necessary for this purpose.

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[468] For fuller accounts of the rule of law, see Lon L Fuller, 'The Morality that Makes Law Possible', ch 2 in *The Morality of Law* (rev edn, Yale University Press 1969) (under 'Eight Ways to Fail to Make Law'); and Lord Bingham, 'The Rule of Law' (*6th Sir David Williams Lecture*, 16 November 2006) <https://www.cpl.law.cam.ac.uk/sir-david-williams-lectures2006-rule-law/rule-law-text-transcript> accessed 16 July 2020.

But all these are ideals. The law is supposed to be stable, but this can come at the expense of needed flexibility: law-making processes can be slow. While the law is freely accessible through the Singapore Statutes Online website[469] and court decisions published online,[470] they are not necessarily easy to comprehend, even by those who have been legally trained. And laws are not always the perfect tools to achieve their aims: the law often falls short of achieving its aims in certain circumstances, and goes too far in others.

Such are the problems that face any authority, particularly one which is responsible for dealing with a situation that changes quickly and unpredictably and that poses a serious risk to people's health and lives. This chapter aims to offer a view into how Singapore has attempted to meet this challenge. After providing a background to the law as it stood just before COVID-19 started to spread, this chapter will chronicle laws restricting both the movements of particular individuals as well as the activities of society more generally for the sake of fighting COVID-19, and discuss how these laws have evolved – and continue to evolve – to meet the developing crisis, and the implications for the rule of law and the principle of proportionality. It will not be possible to describe and analyse all COVID-19-related laws in detail, but it is hoped that this chapter will provide some food for thought.

Background: the pre-COVID-19 law

Before COVID-19, the main law dealing with pandemics was the Infectious Diseases Act (IDA), which was passed in 1976 following a malaria epidemic and a typhoid epidemic in 1975.[471] The IDA overhauled the law on infectious diseases, which by then had become outdated. The IDA included a list of "infectious diseases" and gave various powers to health officials[472] which related to such diseases. Contacts of those who had an infectious disease could be made to undergo medical examination;[473] those confirmed to have an infectious disease could be made to undergo treatment.[474] Officials also had the power to order people who had or were suspected to have an infectious disease to be quarantined (the word used in the IDA is "isolated") at home or in hospital.[475]

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[469] Singapore Statutes Online <http://sso.agc.gov.sg>.
[470] Particularly decisions of the High Court and the Court of Appeal (which together make up the Supreme Court), which are available at the Supreme Court's website: <https://www.supremecourt.gov.sg/news/supreme-court-judgments>.
[471] *Singapore Parliamentary Debates: Official Report* (24 November 1976) vol 35 at col 1096 (Dr Toh Chin Chye, Minister for Health).
[472] Specifically, the Commissioner of Public Health and Director, Deputy Directors and Assistant Directors of Medical Services, as well as officers (known as Health Officers) to whom the Commissioner or Director delegated powers: Infectious Diseases Act (Cap 137, 1985 Rev Ed) as originally enacted, s 4.
[473] ibid s 8(1).
[474] ibid s 8(1).
[475] ibid s 14.

Following the beginning of the severe acute respiratory syndrome (SARS) crisis in 2003, the IDA was amended to grant even more extensive powers to health officials. For example, people who had recently been treated for or even recovered from an infectious disease could now be quarantined.[476]

In addition, a new provision was introduced into the IDA – section 21A – which made it an offence for a person who "knows or has reason to suspect that he is a case or carrier or contact" of certain diseases, such as SARS, to "expose other persons to the risk of infection by his presence or conduct" in public or shared spaces (other than his own home).[477]

Finally, the penalties for offences under the IDA (including the offence of violating an isolation order and the offence in section 21A) were increased. Previously, a first-time offender could be fined up to $5,000; now, a first-time offender could be fined up to $10,000 and/or jailed up to 6 months.[478]

Two points about the IDA stand out. First, the IDA empowered officials to impose severe restrictions on individuals' freedom of movement. Second, section 21A was worded very broadly, in that it did not define precisely what sort of activity would "expose other persons to the risk of infection". This is not to say that the IDA granted untrammelled power: the IDA only applied to certain infectious diseases; and section 21A only applied to SARS.

Restrictions on certain individuals' movements

Quarantine orders under the Infectious Diseases Act

Such was the state of the law relating to infectious diseases as of January 2020, which is the time the COVID-19 outbreak in Singapore began. On 28 January 2020 (on which Singapore's fifth case was confirmed),[479] COVID-19 was added to the list of "infectious diseases" in the IDA; now the IDA – including section 21A – applied to COVID-19.[480]

[476] Infectious Diseases Act (Cap 137, 2003 Rev Ed) as amended by the Infectious Diseases (Amendment) Act 2003 (No 5 of 2003) and the Infectious Diseases (Amendment No 2) Act 2003 (No 7 of 2003), s 15(2).
[477] ibid s 21A.
[478] ibid s 65(a); cf. the Infectious Diseases Act as originally enacted in 1976 (n 450) s 65.
[479] Rei Kurohi, 'Wuhan virus: Singapore confirms 5th case; patient from Wuhan stayed at her family's home in Ceylon Road' (*The Straits Times*, 28 January 2020) <https://www.straitstimes.com/singapore/wuhan-virus-singapore-confirms-5th-case-patient-from-wuhan-stayed-at-her-familys-home-in> accessed 15 July 2020
[480] Infectious Diseases Act – Infectious Diseases Act (Amendment of First and Second Schedules) Notification 2020 (S 68/2020).

This was clearly a time for the powers in the IDA to be deployed. On 28 January 2020, the Ministry of Health announced that all travellers from Hubei, China would be quarantined for two weeks under the IDA.[481]

Leave of Absence and Stay-Home Notices

But in the following days, the Government began to take new measures not mentioned anywhere in the IDA. On 31 January 2020, the Ministry of Manpower ("MOM") issued a press statement stating that "work pass holders entering Singapore with travel history to mainland China within the last 14 days are required to take a 14-day leave of absence upon arrival in Singapore".[482] Two points stand out about this. First, "leave of absence" (or "LOA" for short) is not a legal term of art, and the MOM did not cite any law relating to "leave of absence". Second, the IDA – which contained most of the law on infectious diseases – only conferred powers (such as the power to order that people be quarantined) on health officials (namely, the Director or a Deputy Director of Medical Services – who are officials from the MOH – or a Health Officer to whom the Director or Deputy Director delegated power).[483] While there is a *Multi-Ministry Taskforce on Wuhan Coronavirus*,[484] the fact remains that the IDA does not confer powers on the MOM or its officers.

One may question this development from the point of view of the rule of law. In the first place, it is not clear whether the LOA requirement was law at all. The MOM's press release said that those on an LOA "should stay at home and avoid social contact" – but "should" does not mean that one is compelled by the law to do something.[485] The press release went on to state that "[e]mployers and employees have a joint duty to ensure that the employee behaves responsibly during the leave of absence. MOM reserves the right to take action against the employer or employee, if they fail to discharge their duty." Not only is a press statement not a law; this press statement was not entirely clear: the phrase "behaves responsibly" is vague, and nothing was said about the precise types of "action" that MOM could take. One might even think that the MOM was threatening to act

[481] Ministry of Health Singapore, 'Additional Precautionary Measures to Minimise Risk of Community Spread in Singapore' (28 January 2020) <https://www.moh.gov.sg/news-highlights/details/additional-precautionary-measures-to-minimise-risk-of-community-spread-in-singapore> accessed 15 July 2020.
[482] Ministry of Manpower Singapore, 'Update on Additional Measures by MOM to Minimise the Risk of Community Spread of the COVID_19' (31 January 2020) <https://www.mom.gov.sg/newsroom/press-releases/2020/0131-update-on-additional-measures-by-mom-to-minimise-the-risk-of-community-spread> accessed 15 July 2020.
[483] Infectious Diseases Act (Cap 137, 2003 Rev Ed) s 2 (definition of "Director") and s 4.
[484] Jalelah Abu Baker, 'Singapore forms Wuhan virus ministerial task force, imported case "inevitable": Gan Kim Yong' (*Channel News Asia*, 22 January 2020) <https://www.channelnewsasia.com/news/singapore/wuhan-virus-singapore-ministerial-task-force-inevitable-12301610> accessed 15 July 2020; Multi-Ministry Taskforce on Wuhan Coronavirus, 'Terms of Reference (TORs) and Composition' (*Ministry of Health Singapore*, 27 January 2020) <https://www.moh.gov.sg/docs/librariesprovider5/default-document-library/multi-ministry-taskforce-on-wuhan-coronavirus-and-tor---final.pdf> accessed 15 July 2020.
[485] Ronan Cormacain, 'COVID-19: When is a rule not a rule?' (*Bingham Centre for the Rule of Law*, 24 April 2020) <https://binghamcentre.biicl.org/comments/88/COVID-19-when-is-a-rule-not-a-rule> accessed 15 July 2020, which discusses UK government websites stating what people "should" do in response to COVID-19.

unlawfully, in that there was no law imposing such a "duty" or giving the MOM the power to "take action".

But the truth is that the MOM *does* have the power to "take action" – not under the law relating to infectious diseases, but rather under the law to the employment of foreign workers. Under the Employment of Foreign Manpower Act (EFMA), foreigners need a work pass to work in Singapore.[486] Section 7(4) of the EFMA gives MOM officials powers to attach conditions to or revoke a work pass at any time. While these powers are not unlimited,[487] they are certainly wide. Seen in this light, the MOM's press statement has actually injected a degree of clarity by specifying *when* the MOM will exercise its powers relating to work passes. The press statement is still vague, but the net effect is, paradoxically, to reduce vagueness.

A few weeks later, the Government stopped the LOA regime and replaced it with a regime of 'stay-home notices' (SHNs),[488] which required certain persons to stay at home or in a specified place (such as a government-designated hotel). The difference was that persons under SHNs are not allowed to leave their homes at all (whereas those under LOAs were "allowed to leave their residences for daily necessities or urgent matters").[489] Like LOAs, SHNs are not mentioned anywhere in the IDA. Yet the MOH stated that a person who violated an SHN could face criminal prosecution under section 21A of the IDA;[490] and SHNs themselves state that foreign employees who risk having their work passes revoked.[491]

Earlier, we have seen that the LOA regime served to shed light on when the MOM might be inclined to exercise its powers to revoke or impose conditions on work passes. The SHN regime, too, sheds light on when MOM will exercise these powers. One might think that, similarly, the SHN regime sheds light on how section 21A of the IDA works. But there is a key difference. The mere fact that someone has breached the terms of an SHN does not necessarily mean that one has committed an offence under section 21A. An element of section 21A is that the person's "presence or conduct" outside home must have "expose[d] other persons to the risk of infection". It would therefore, in theory, be open to a person accused of violating section 21A by violating a SHN to argue that he

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[486] Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) s 5.
[487] The EFMA does not explicitly say so, but it is likely that a court would hold that there are implied limitations on powers to revoke or attach conditions to work passes.
[488] Ministry of Health Singapore, 'Implementation of New Stay-Home Notice' (17 February 2020) <https://www.moh.gov.sg/news-highlights/details/implementation-of-new-stay-home-notice> accessed 15 July 2020.
[489] Ministry of Manpower Singapore, 'Mandatory Stay-Home Notice for Work Pass Holders with Travel History to Mainland China' (17 February 2020) <https://www.mom.gov.sg/newsroom/press-releases/2020/0214-mandatory-shn-for-wph-with-travel-history-to-china> accessed 15 July 2020.
[490] Ministry of Health Singapore (n 488).
[491] A copy of the present version of the SHN is available on the website of the Immigration and Checkpoints Authority, 'Stay-Home Notice and COVID-19 test' <https://www.ica.gov.sg/COVID-19/shn> accessed 16 July 2020.

is not guilty because he took sufficient measures to avoid exposing others to the risk of infection. It would have been interesting to see what how the courts would have responded to such an argument, but it appears that they had no opportunity to do so: there was one case in which a person was prosecuted under section 21A, but he pleaded guilty.[492]

For these reasons, SHNs, as they were first introduced, posed a potential problem with the rule of law, in that it was not clear precisely what their legal basis was or what legal rule would be broken by a person who flouted a SHN. But we must not forget that the IDA has always allowed health officials to order that people be quarantined, which is more restrictive than being issued with an SHN. Those quarantined under the IDA are, by default, required to be isolated from contact with *anybody* (other than healthcare staff).[493] In other words, unless health officials direct otherwise, if a person lives with others and is ordered to be quarantined, either that person must either be quarantined somewhere outside home (such as a hospital) or the other residents must move out. By contrast, the SHN regime did not, and still does not, forbid a person from living with others. (At present, SHNs only state that those who live with others "should" – not must – stay in their own rooms "as much as possible".)[494] Seen in this light, while we may criticise the SHN regime (as it was first introduced) from the point of view of the rule of law, it did promote the principle of proportionality.

The new law on Stay-Home Notices

Eventually, however, this point became moot because a new law – the Infectious Diseases (COVID-19 – Stay Orders) Regulations 2020 (or "Stay Orders Regulations" for short) – was enacted on 26 March 2020.[495] These Regulations (which, despite a few amendments, are still in force as at the time of writing) create a clear legal basis for SHNs by laying down rules regarding "stay orders": now, the term 'SHN' is simply an informal name for a stay order.[496] The Regulations specify, in detail, who can issue an SHN; who can be issued with an SHN; and what precisely an individual who is subject to an SHN cannot do. (For example, the Regulations state explicitly that, if a person is under an SHN, people who do not ordinarily live at his/her home cannot come to his/her home; but that there is an exception for workers delivering food or essential goods,[497]

[492] Shaffiq Alkhatib, 'Coronavirus: Jail for man who breached stay-home notice to eat bak kut teh' (*The Straits Times*, 24 April 2020) <https://www.straitstimes.com/singapore/courts-crime/jail-for-man-who-breached-stay-home-notice-to-eat-bak-kut-teh> accessed 15 July 2020. The person was sentenced to six weeks' imprisonment.
[493] Infectious Diseases Act (Cap 137, 2003 Rev Ed) s 2 (definition of "isolation").
[494] Immigration and Checkpoints Authority (n 491).
[495] Infectious Diseases Act - Infectious Diseases (COVID-19 – Stay Orders) Regulations 2020 (S 182/2020) ("Stay Orders Regulations").
[496] This is confirmed by the Government of Singapore, 'Everything you need to know about Stay-Home Notice' (*gov.sg,* 25 June 2020) <https://www.gov.sg/article/everything-you-need-to-know-about-the-stay-home-notice> accessed 15 July 2020, which states that it is the Infectious Diseases (COVID-19 – Stay Orders) Regulations 2020 that criminalises a breach of an SHN.
[497] Stay Orders Regulations (n 495) r 4(2).

emergency workers,[498] and medical workers who provide treatment, therapy, or care for physical or mental disabilities.)[499] Finally, the Regulations make clear that it is an offence simply to fail to comply with a stay order;[500] there is no need for prosecutors to resort to section 21A of the IDA to attempt to prosecute people who disobey stay orders.

In short, it has always been possible for those suspected of being at risk of COVID-19 could be ordered to be quarantined at home; yet the Government furthered the principle of proportionality by developing the LOA and SHN regimes, which were less restrictive. While these regimes might have been subject to criticism from the point of view of the rule of law, these criticisms were rendered moot when the Government eventually formalised the SHN regime in the form of law. One might ask why the MOH did not simply enact the Stay Orders Regulations to begin with. After all, the Stay Orders Regulations are certainly better from the point of view of legal certainty and consistency, which are cornerstones of the rule of law. A plausible answer is that, like any law, the Stay Orders Regulations would have taken time to formulate and draft. In the meantime, if not for the interim SHN regime, people suspected of being at risk of COVID-19 would either be free to go about as they pleased (which would threaten public health) or have to be ordered to be quarantined (which would undermine the principle of proportionality).

There is one final anecdote that bears mentioning. The reason why the aforementioned person had been charged with an offence under section 21A is that, after he had just returned to Singapore from overseas, he went out for a meal instead of going straight home from the airport. He later told an interviewer from the media that he thought that the SHN only took effect from the day after he landed in Singapore, and not immediately after he landed.[501] It does not appear that he attempted to raise this argument in court; there is no telling whether it would have succeeded as a defence. But what is interesting is that, two days after the Stay Orders Regulations were enacted, they were amended to state explicitly that an SHN takes effect "upon the issue of the order" and lasts "up to and including the 14th day after the day of the issue of the order". By contrast, these Regulations had initially stated that a SHN would take effect for "a period (not exceeding 14 days) specified in the order"; this would have left the risk that the SHN was ambiguous. (Indeed, the SHN in the case previously mentioned stated that the person in question had to "remain in your place of residence at all times for a 14-day period";[502] one could argue that this failed to make clear when the period started.) By contrast, the revised Stay Orders Regulations contain no room for ambiguity. SHNs

[498] ibid r 4(3)(a).
[499] ibid r 4(3)(b).
[500] ibid r 4(4).
[501] Tan Tam Mei, 'Singaporean who breached COVID-19 stay-home notice for bak kut teh: "I thought it started the next day"' (*The Straits Times*, 25 March 2020) <https://www.straitstimes.com/singapore/sporean-who-flouted-COVID-19-stay-home-notice-for-bak-kut-teh-i-thought-it-started-the> accessed 15 July 2020.
[502] Lydia Lam, 'Man who dined out on bak kut teh while on stay-home notice pleads guilty in first such case' (*Channel News Asia*, 16 April 2020) <https://www.channelnewsasia.com/news/singapore/bak-kut-teh-stay-home-notice-jail-circuit-breaker-COVID-19-12645590> accessed 16 July 2020.

themselves now reflect this: they state explicitly that "The SHN period will commence **with immediate effect** from the time it is issued to you".[503]

It is not clear whether the court case was the reason why the MOH chose to revise the Stay Orders Regulations. Nonetheless, this episode highlights an important feature of legal certainty. There is always the chance that, however well-intentioned a law-maker is, the law might end up being ambiguous, and therefore fall somewhat short of the ideal of the rule of law. It is commendable that the Stay Orders Regulations were amended to remove this last trace of ambiguity; the fact that this was necessary illustrates that upholding the rule of law is often a continuous process.

Restrictions on society more generally

Having discussed quarantine orders and SHNs, let us now turn our attention to restrictions which apply to the public generally.

Restrictions before the 'circuit breaker'

The first law that imposed such restrictions was the Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020[504] (or "Prevention Regulations" for short). The Prevention Regulations were extremely detailed. They contained a long list of activities which were forbidden, from "any competition, sporting event or sporting contest between any number of people or animals", to "any enrichment activity or tuition conducted for children… at an enrichment centre, a tuition centre, or a sporting facility", to "any provision of goods, entertainment or services at a bar, public house, karaoke lounge, nightclub or discotheque".[505] (Two days later, the Prevention Regulations were amended to add several curious activities to this list, such as activities at a "paintball games centre" or an "axe-throwing centre".)[506] Other activities were allowed to continue, but only up to ten individuals were allowed to attend.[507] There were also rules requiring that those attending events or in public places generally maintained a distance of at least one metre from one another. These rules were laid out in often excruciating detail: for instance, regulation 6(1)(a)(ii) stated that if, in a public place, there was "seating… fixed to the floor", then the "owner or occupier of [the] public place" was legally obliged to "ensure that alternate seats are demarcated as seats not to be occupied". (The Regulations explicitly stated that it was a criminal offence, punishable

[503] Immigration and Checkpoints Authority (n 495) (emphasis in original).
[504] Infectious Diseases Act - Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020 (G.N. S 185/2020) ("Prevention Regulations").
[505] ibid r 3(1)(f).
[506] There appears to be only one axe-throwing centre in Singapore, which describes axe-throwing as follows: "Think darts, but bigger and better!": Axe Factor Pte Ltd, 'FAQ' <https://axefactor.com.sg/faq> accessed 15 July 2020.
[507] Prevention Regulations (n 504) r 4.

with a fine of up to $10,000 and/or imprisonment of up to 6 months, to "si[t] on a fixed seat in a public place that is demarcated as not to be occupied").[508]

These rules are commendable for their precision: they specified in detail what is and is not allowed, and were therefore capable of guiding people's conduct; this is in keeping with the rule of law. But one can imagine that they must have been very disruptive to individuals and, perhaps more significantly, businesses. The introduction of laws with such a huge impact can threaten the rule of law: if they take people by surprise, then the law has failed to operate in a stable and predictable manner. The Government did attempt to mitigate this risk by introducing the rules in an informal fashion before they began to have the force of law. While the Prevention Regulations were published and came into force on 26 March 2020, the MOH announced the impending closure of various premises (such as entertainment venues) two days in advance,[509] and, more than a week before that, announced "various safe distancing measures to be taken to reduce the risk of local spread of COVID-19" on 13 March 2020.[510]

Of course, the Prevention Regulations still came at very short notice for the businesses which had been ordered to close; to this extent, the rule of law may, to this extent, be said to have taken a back seat to the protection of public health. (Moreover, when measuring the practical impact of such drastic measures, we must consider the impact of various government schemes that aimed to ameliorate the impact of COVID-19 on individuals and businesses).

Besides the issue of short notice, one could argue that there was a potential element of arbitrariness to the Prevention Regulations. For example, while the Prevention Regulations required "bar[s]" to be closed, some pointed out that restaurants could still serve alcohol late at night.[511] The Prevention Regulations do not define "bar", but that word was probably intended to have the same meaning as in another law known as the Planning (Use Classes) Rules, namely, "a building used for the carrying on of any trade or business where the *primary purpose is the sale of alcoholic drinks* for consumption on the premises without dancing, singing or performance of live music or live entertainment" (emphasis added). Why, one might ask, should two establishments be treated differently merely because one serves more food than the other?

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[508] ibid r 6(3)(b).
[509] Ministry of Health Singapore, 'Stricter Safe Distancing Measures to Prevent Further Spread of COVID-19 Cases' (20 March 2020) <https://www.moh.gov.sg/news-highlights/details/stricter-safe-distancing-measures-to-prevent-further-spread-of-COVID-19-cases> accessed 15 July 2020; Ministry of Health Singapore, 'Tighter Measures to Minimise Further Spread of COVID-19' (24 March 2020) <https://www.moh.gov.sg/news-highlights/details/tighter-measures-to-minimise-further-spread-of-COVID-19> accessed 15 July 2020.
[510] Ministry of Manpower Singapore, 'Advisory on safe distancing measures at the workplace' (13 March 2020) <https://www.mom.gov.sg/COVID-19/advisory-on-safe-distancing-measures> accessed 15 July 2020.
[511] Lena Loke and Mandy Lee, 'When the clock strikes 12: Shutters fall on bars and pubs as new measures take effect' (*TODAY Online*, 27 March 2020) <https://www.todayonline.com/singapore/when-clock-strikes-12-shutters-fall-bars-and-pubs-new-measures-take-effect> accessed 15 July 2020.

To be sure, closing bars would go some way toward achieving the purpose of the Prevention Regulations, in that closing bars would lower the risk of disease transmission by reducing the number of places at which people can congregate. But the closure of bars was, as lawyers often say, 'under-inclusive': it did not go far enough to achieve this purpose. Why not close restaurants that serve alcohol as well? The problem is that doing so would also reduce the availability of food, which is of course an essential good. One might retort that the law could have been worded such that restaurants could operate but not serve alcohol – but this would have the opposite problem of being 'over-inclusive': if a customer is going to sit at a restaurant and eat dinner anyway, why deprive the restaurant of the opportunity to earn income by selling a glass of wine with that meal? One can go on and on with examples and counter-examples, but the point is that it is difficult to conceive of – let alone formulate and implement – a law that goes just far enough, and no further, as is required to perfectly achieve its purpose. In other words, despite the best efforts of law-makers, some degree of disproportionality between the aim of a law and the means used to achieve that aim must be tolerated.

The beginning of the 'circuit breaker'

The most onerous restrictions came with the introduction of the 'circuit breaker' period, which was announced on 3 April 2020[512] and came into effect on 7 April 2020 in the form of the COVID-19 (Temporary Measures) (Control Order) Regulations 2020[513] (or "Control Order Regulations" for short). What is striking about the Control Order Regulations is their general approach to individuals' autonomy. The general way that the law works is that people are free to do anything unless explicitly forbidden. (For example, under the Prevention Regulations, one was generally free to go anywhere and do anything except what was explicitly forbidden by the Prevention Regulations.) The Control Order Regulations, which superseded the Prevention Regulations,[514] inverted this legal order: now, people were not free to leave their homes unless the law explicitly allowed them to do so. The starting point was a general rule that "every individual must stay at or in, and not leave, his or her ordinary place of residence in Singapore".[515] There followed a list of permitted purposes for which individuals could leave their homes – but "only to the extent necessary" for those purposes.[516] Further, there was a general rule that all "premises other than residential

[512] Ministry of Health Singapore, 'Circuit Breaker to Minimise Further Spread of COVID-19' (3 April 2020) <https://www.moh.gov.sg/news-highlights/details/circuit-breaker-to-minimise-further-spread-of-COVID-19> accessed 15 July 2020.
[513] COVID-19 (Temporary Measures) Act - COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (S 254/2020) (as originally enacted) ("Control Order Regulations").
[514] Infectious Diseases Act - Infectious Diseases (Revocation) Regulations 2020 (S 264/2020).
[515] Control Order Regulations (as originally enacted) (n 513) r 4(2).
[516] ibid r 4(3).

premises" had to be closed, other than the premises of select types of businesses (known as "essential services").[517]

One would think that any authority with the power to make such rules has the potential to abuse this power. (After all, a classic tactic of dictators is to use the spectre of a public crisis to justify disproportionately heavy restrictions upon individuals, even long after the crisis has abated.) However, the Singapore Government made such rules in a manner that demonstrated a commitment to the principle of proportionality, in that the rules can only exist so long as the COVID-19 crisis exists.

To understand this, it is necessary to examine the source of the Government's legal powers to pass all the Regulations it had. The Prevention Regulations had been issued in the name of the Minister for Health. The Minister derived his power to issue such regulations from section 73 of the IDA, which states that the Minister "may make regulations for carrying out the purposes and provisions of this Act for which he is responsible". It is unclear what precisely this means. One wonders, for example, whether section 73 would allow the Minister to make Regulations ordering that businesses be closed down even if there were only a tiny risk of someone contracting an infectious disease.

But the Control Order Regulations were not made using the power in section 73 of the IDA. Instead, on the day that the 'circuit breaker' came into effect, Parliament passed a new Act known as the COVID-19 (Temporary Measures) Act ("Temporary Measures Act" for short). This Act allowed the Minister for Health to issue 'control orders', such as the Control Order Regulations. In contrast to the power under section 73 of the IDA, the Temporary Measures Act allows the Minister for Health to issue a control order only:

a. "for the purpose of preventing, protecting against, delaying or otherwise controlling the incidence or transmission of COVID-19"; *and*
b. only if the Minister is satisfied that:
    i. "the incidence and transmission of COVID-19 in the community in Singapore constitutes a serious threat to public health", *and* that
    ii. "a control order is necessary or expedient to supplement the Infectious Diseases Act and any other written law".[518]

In other words, if, hypothetically, a control order like the Control Order Regulations were to remain in force even at a time where there is only a tiny risk of someone contracting COVID-19, one could

[517] ibid r 9(1).
[518] COVID-19 (Temporary Measures) Act (No 14 of 2020) s 34(1)(b).

seek to challenge that control order in court on the ground that the Minister cannot possibly seriously believe that COVID-19 still "constitutes a serious threat to public health". Because the power to issue control orders is limited, the rule of law is upheld, because it is far more difficult for someone in the Minister's position to use COVID-19 as an excuse to issue control orders arbitrarily for an indefinite period.

Through the 'circuit breaker' and beyond

Various changes were later made to the Control Order Regulations over time. For example, on 15 April 2020, it was made compulsory for each individual to wear a mask when outside his/her home, with only certain limited exceptions (such as when one was engaging in strenuous exercise, or was in a car alone or together with only people with whom one lived).[519] Less than 12 hours later on the same day, the Regulations were amended to add one exception: namely, that one did not need to wear a mask when riding a motorcycle.[520] On the same day, the wording of the Regulations was modified to clarify that, while it was permissible to move to a new place to live permanently, it was not permissible merely to visit somebody else's residence.[521] Again, improving clarity in the law is a continuous process.

Eventually, in May and June, the Control Order Regulations were modified in order to effect the end of the 'circuit breaker' and the beginning of 'Phase One: Safe Re-opening' and 'Phase Two: Safe Transition'. For example, the Control Order Regulations now allow one to leave one's home for a wider range purposes, such as simply to engage in "social or recreational activity" at certain places.[522]

Conclusion: law beyond traditional forms

This chapter has provided a sketch of how the law has evolved, becoming more severe when necessary to tackle the crisis, allowing for greater individual freedoms in proportion to the more recent decrease in the rate of COVID-19 transmission, and better reflecting the rule of law over

[519] COVID-19 (Temporary Measures) Act 2020 - COVID-19 (Temporary Measures) (Control Order) (Amendment No. 3) Regulations 2020 (S 273/2020) ("Amendment (No 3) Regulations").
[520] COVID-19 (Temporary Measures) Act 2020 - COVID-19 (Temporary Measures) (Control Order) (Amendment No. 4) Regulations 2020 (S 274/2020).
[521] The old wording stated that individuals could leave home in order to "move to another place of accommodation", which could conceivably refer to travelling temporarily to visit someone else's residence. On 15 April, this wording was changed to "move from the individual's ordinary place of residence to stay in another accommodation in substitution of the firstmentioned place of residence as the individual's ordinary place of residence": see the Amendment (No 3) Regulations (n 519).
[522] COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (S 254/2020) (as most recently amended on 4 July 2020) r 4(3)(d).

time. Our sketch must conclude at this point, even as it remains to be seen how the law will change further in future (particularly during the anticipated 'Phase Three: Safe Nation').

There is one last point to be made. Let us recall that the rule of law is not just an abstract principle; it serves the important purpose of ensuring that people know exactly what is permitted or forbidden by the law, and are hence able to plan their activities in full knowledge of the legal consequences. So far, this chapter has focused on laws which are drafted in a precise, formal manner. We have seen how this creates legal certainty, but it will be evident how this can come at the expense of accessibility from the point of view of the average person in society.

But the Control Order Regulations challenge this traditional understanding of what law looks like. One feature about the Control Order Regulations that has always stood out is their reference to a particular website which the Regulations call the "prescribed website" (presently https://covid.gobusiness.gov.sg/permittedlist).[523] Various terms in the Control Order Regulations, such as "essential service", "essential service provider", "permitted enterprise", and "authorised service", have all been defined by reference to that website. For example, at present, the Control Order Regulations now state that individuals are allowed to work for a "permitted enterprise" or to "procure an authorised service from a permitted enterprise".[524] The definition of "permitted enterprise" includes "a person who provides any goods or services specified on the prescribed website, in the course of business", and an "authorised service" includes "the provision of any goods or services specified… on the permitted website".[525] There is also a rule that "permitted enterprises" may only carry on their businesses with the permission of the Minister for Trade and Industry and in accordance with restrictions stated on the website. In other words, there are many key details that are not specified in the law; they are instead in a website.

Does this violate the rule of law? One might think the answer is yes, for the Regulations, which are law, fail to specify these details. But, in this author's view, the truth is that the website *is* law, no less than the Regulations. The Regulations refer specifically to the website. The website is maintained by the same authorities who are authorised by the COVID-19 (Temporary Measures) Act to make laws. And the website does everything that law is supposed to do: for example, it sets out clear rules for the operation of businesses, including in the form of a FAQ. These rules are not expressed in the same language as typical Regulations or Acts of Parliament. But that does not mean that they are not law.

[523] ibid r 2(1) (definition of "prescribed website").
[524] By contrast, businesses which are not "permitted enterprises" can only carry out their businesses from home and "through means that do not require meeting any other individual in person": ibid r 11.
[525] ibid r 2(1).

At the same time, the website, taken together with the Control Order Regulations, mitigates the risk of over-rigidity, which is a potential downside of pursuing legal certainty and stability at all costs. The Control Order Regulations allows businesses to depart from the general rules with the permission of the Minister for Trade and Industry, and the website makes it easy to apply for such permission by filling in an online form.

Perhaps this is a reminder that we ought to bear in mind even after the present crisis: that, when considering how best to uphold the rule of law and the principle of proportionality, we ought to think beyond our traditional understandings of what law is. In this chapter, we have explored LOAs, which did not have the force of law but which did serve to clarify other laws; SHNs, which began as non-law but were eventually crystallised into law; social distancing measures, which were communicated through informal extra-legal means even before they became law; and the website, which is law despite appearing easier to understand by the general public. All of these aim to uphold the ideals of law by departing, in one way or another, from traditional forms of law. There is no reason why this practice should not continue even after COVID-19.