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Reception of English Law in Singapore: Problems and proposed solutions

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RECEPTION OF ENGLISH LAW IN SINGAPORE: PROBLEMS AND PROPOSED SOLUTIONS

Introduction

The problems pertaining to the reception of English law in Singapore are both numerous and complex. The academic literature generated in the local sphere alone is relatively large.[1] It must, however, be conceded that, from a *practical* point of view, there has been very little interest or at least discussion. One cannot, of course, be sure about this observation, save for the very strong indication that takes the form of the overwhelming lack of litigation in the area, thus rendering it merely (so it appears) an academic monopoly. It should, however, be pointed out that this rather phlegmatic approach in practice belies the very real importance of the issues and problems raised. It is, for example, clear that, unless radical changes are in the offing, reception of English law is of crucial importance in so far as it concerns the

[1] For a sampling with regard to the general reception of English law, see G.W. Bartholomew, "The Reception of English Law Overseas", (1968) 9 Me Judice 1; "The Singapore Legal System" in Singapore: *Society in Transition* (Edited by Riaz Hassan, 1976), pp.84 to 112; "Introduction" to the *Tables of The Written Laws of the Republic of Singapore,* 1819 - 1971 (Complied by Elizabeth Srinivasagam and the Staff of the Law Library, University of Singapore, 1972); "Sources and Literature of Singapore Law", (1982) 2 Lawasia (N.S.) 1; "The Singapore Statute Book", (1984) 26 Mal. L.R. 1, especially at pp. 11 to 15; "Introduction" to the *Sesquicentennial Chronological Tables of the Written Laws of the Republic of Singapore* 1834 - 1984 (by G.W. Bartholomew, Elizabeth Srinivasagam, and Pascal Baylon Netto, 1987); M.B. Hooker, "The East India Company and the Crown 1773-1858", (1969) 11 Mai. L.R. 1;*A Concise Legal History of South-East Asia* (1978), Chapter 5; "English Law in Sumatra, Java, the Straits Settlements, Malay States, Sarawak, North Borneo and Brunei" in *The Laws of South-East Asia,* Vol. II, pp. 299 to 446, especially at p.332 et seq; Mohan Gopal, "English Law in Singapore: The Reception That Never Was", [1983] 1 M.L.J. xxv; Andrew Phang Boon Leong, "English Law in Singapore: Precedent, Construction and Reality or The Reception That Had To Be'", [1986] 2 M.L.J. civ; "Of 'Cut-Off' Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore", (1986) 28 Mal. L.R. 242; Valerie Ong Choo Lin and Ho Kin San, "The Reception That Never Was", (1984) 5 Sing. L.R. 257; and Walter Woon, "The Applicability of English Law in Singapore" in Chapter 4 of The Singapore Legal System (Edited by Walter Woon, 1989).

For a sampling with regard to the *specific* reception of English commercial law under section 5 of the Civil Law Act (Cap. 43, 1988 Ed.), see [1935] M.L.J. lxxvi; [1935] M.L.J. xlviii; N. Vaithinathan, "Logic and the Law: a Note on Section 5(1) of the Civil Law Ordinance", [1957] M.L.J. xxxvi; Chan Sek Keong, "The Civil Law Ordinance, s.5 (1) - A Reappraisal", [1961] 1 M.L.J. lviii, lix; G.W. Bartholomew, *The Commercial Law of Malaysia* (1965); R.H. Hickling, "Civil Law (Amendment No. 2) Act 1979, s.5 of the Civil Law Act: Snark or Boojum?", (1979) 21 Mal. L.R. 351; D.K.K. Chong, "Section 5 Thing-Um-AJig!", [1982] 1 M.L.J. c; Soon Choo Hock and Andrew Phang Boon Leong, "Reception of English Commercial Law in Singapore - A Century of Uncertainly" in Chapter 2 of *The Common Law in Singapore and Malaysia* (Edited by A.J. Harding 1985); Walter Woon, *The Report on Section 5 of the Civil Law Act and the Applicability of English Commercial Law in Singapore.* (unpublished; dated 25 January, 1986 and prepared for the consideration of the Working Group on the Singapore Legal Database); "The Continuing Reception of English Commercial Law" in Chapter 5 of *The Singapore Legal System* (Edited by Walter Woon, 1989); and Tan Yock Lin,

foundation of the Singapore legal system itself.[2] And it is from this foundation - a stable springboard, as it were- that (perhaps ironically) an autochthonous Singapore legal system can ultimately be developed.[3] To this end, therefore, it is the 'practice' that must (perhaps curiously) conform, in part at least, to the 'theory'. All this may, at bottom, be either psychological and/or cultural in nature, but the importance of such a re-orientation cannot be gainsaid. It might be added that if this still sounds too theoretical, then perhaps adding an extra string to one's legal bow in the form of an argument premised upon an English statute might bring us to the less rarefied sphere of practical utility. In attempting to negate the effect of an exclusion clause, for example, it might be desirable to plead the U.K. Unfair Contract Terms Act of 1977 as well, although it is admitted that the nature of the 'reasonableness test' is such that the mere pleading of the Act does not automatically ensure success on this score. Some might perhaps argue that it is unclear whether the Act is received in Singapore by way of section 5 of the Civil Law Act in the first place. The applicability of the 1977 Act is, admittedly, at least arguable, but what is lost by pleading it in any event? So much, then, by way of broader attitudes as well as approaches.

Turning to the reception of English law in Singapore proper, it is common knowledge that English law has been received in at least one of three ways:[4]

First - and arguably most importantly - by way of *historical or general* reception; this concerns the famous (or, rather, 'infamous', for reasons that, if not already, will soon become, apparent) Second Charter of Justice of 1826.

Secondly - reception of English law is effected via *legislative or specific* reception; this concerns the situation where the local statute *expressly provides* for the reception of English law. The (clearly) most 'infamous' provision under this mode

"Characterization in Section 5 of the Civil Law Act", (1987) 29 Mal. L.R. 289. It should be noted that *certain Indian* statutes are also part of the Singapore 'statute book', although the discussion of this particular area is outside the purview of the present article: see, generally, G.W. Bartholomew, "The Singapore Statute Book", supra; and *"Introduction to the Sesquicentennial Chronological Tables of the Written Laws of the Republic of Singapore 1834 - 1984, supra.*

A very recent and extremely comprehensive general work is Michael F. Rutter's *The Applicable Law in Singapore and Malaysia - A Guide to Reception, Precedent and the Sources of Law in the Republic of Singapore and the Federation of Malaysia* (1989).

2 See, generally, Andrew Phang Boon Leong, "English Law in Singapore: Precedent, Construction and Reality or 'The Reception That Had To Be'", *supra,* note 1; "Of 'Cut-Off' Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore", *supra,* note 1.

3 See generally, G.W. Bartholomew, "The Singapore Legal System", *supra* note 1, at pp. 97 to 109; and "Developing Law in Developing Countries", (1979) 1 Lawasia (N.S.) 1. See, also, Andrew Phang Boon Leong, "Of Generality and Specificity - A Suggested Approach Toward the Development of an Autochthonous Singapore Legal System", (1989) 1 S.Ac. L.J. 68.

4 Though there is, arguably, a fourth, *viz.,* 'practical reception': see Woon, "The Applicability of English Law in Singapore", *supra,* note 1, at pp. 125 to 133.

of reception must surely be our 'old friend', section 5 of the Civil Act [5] who has hitherto survived attempts to, first, rehabilitate, and then (perhaps out of utter despair) to kill it. Of this, more later.

Thirdly, there is reception of English law by way of *imperial legislation,* which is simply legislation enacted at Westminster by the English Parliament and which has been *expressly extended* to (here) Singapore. Up to 1987, the most well-known piece of imperial legislation was probably the Imperial Copyright Act of 1911 which was, however, replaced by the local Copyright Act that very same year. [6] In terms of quantum, this mode of reception (I would prefer to term it direct compulsory imposition) is rather less significant, although the issue of imperial legislation is by no means a dead one: witness, for example, the recent decision of *Tan Ah Yeo* v. *Seow TeckMing*[7] which concerned the applicability of the U.K. Maritime Conventions Act 1911.

The focus of the instant article will be on *the first two, viz.,* general and specific reception, respectively. And in order to generate as much practical utility as possible, I will propose reforms where applicable. It will, however, be seen that neat *solutions* such are, more often than not, impossible owing to the very nature of the conundrums themselves. It is, however, hoped that the suggested reforms will mitigate the intensity of the various problems as well as provoke suggestions from other interested parties.

General Reception

The general reception of English law is traditionally perceived to have been effected via the Second Charter of Justice of 1826;[8] this is, in the main, a result of the famous construction of the Charter itself by Maxwell R. in the celebrated case of *R.* v *Willans.*[9] We meet, however, problems right at the very outset, for this relatively well-established proposition was challenged not many years ago;[10] in that challenge,

5 Cap. 43, 1988 Ed.

6 Act No. 2 of 1987 (see, now, Cap. 63,1988 Ed.).

7 [1989] 2 M.L.J. 3.

8 Letters Patent establishing the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca dated November 27, 1826, and made under the authority of Act 6 Geo 4, c.85. The 'First Charter', dated March 25, 1807, was virtually identical in terms but extended only to Penang or Prince of Wales' Island as it was then known, being the only British acquisition at that point in time. Singapore was formally ceded by Johore to the British in 1824 and Malacca likewise in the same year by the Dutch via the Anglo-Dutch Treaty. Penang, Singapore and Malacca were formally united together to form the Straits Settlements in 1826. See, generally, CM. Turnbull, *The Straits Settlements 1826-67 - Indian Presidency to Crown Colony* (1972).

9 (1858)3 Ky. 16. And see the *Preface* by the Law Revision Commission to the 1985 Revised Edition of the Statutes of Singapore: "This Edition does not, however, include English statute law applicable to Singapore by *virtue of the Charter of Justice of 1826* nor other Imperial Legislation which have current application in Singapore," *(emphasis mine).*

10 See Mohan Gopal, *supra,* note 1.

the author argued that the Second Charter of Justice had never introduced English law into the then Straits Settlements (of which Singapore was, of course, a part). This rather radical view did not go unchallenged,[11] and whilst it must now be considered largely unpersuasive (there being, in addition, very recent case-law to contrary effect [12]), several problems remain, even at this threshold stage. One problem pertains to a point already mentioned, *i.e.,* the lack of discussion on the debate itself- which, once again, suggests, at least, that there might possibly be a lack of interest in local 'roots'.[13] The second is of rather more practical significance - despite the fact that the balance of the various arguments weighs very heavily (even conclusively) in favour of the traditional construction of the Second Charter of Justice so as to effect a general reception of English law in general and English statutes in particular in the local context, it cannot be denied that the entire issue is *not unambiguously* clear.[14] Most other countries that have come under British colonial rule do not, in fact, face similar problems, simply because there have been enacted in these countries *local* statutes that unambiguously introduce English law.[15] I am therefore of the view that the Singapore Parliament should *enact a 'Reception of English Law Act' to eradicate all doubts that English law has, in fact, been received in Singapore.*[16] Even if this be the incorrect solution in law, I am of the view that such an act should nevertheless be enacted in order that a clear 'base' might exist for the development of an autochthonous Singapore legal system. Some might argue that it is inappropriate to embrace the law of a *foreign* (here English) legal system as the foundation for *indigenous* development. This argument is, however, rather unpersuasive as well as unrealistic for several reasons. First, it is my view that the Singapore legal system has not developed sufficiently (in both quantum as well as substantive development) that English law can be dispensed

11 See Phang, "English Law in Singapore: Precedent, Construction and Reality or 'The Reception That Had To Be'",*supra,* note 1; and Ong and Ho, *supra,* note 1.

12 See per Chan Sek Keong J. in *Reidel-de Haen AG v. Liew Keng Pang* [1989] 2 M.L.J. 400 at 402.

13 See Phang, *supra,* note 11, at pp.civ to cv.

14 *Cf.* the debate above: see *supra,* notes 10 and 11.

15 See, e.g. Declaratory Act, *The Statute Law of the Bahama Islands 1799-1965* (1965), Vol. 1, Cap. 2; Law of England (Application) Act, *The Laws of Gambia* (1966), Vol. 5, Cap. 104; Application of English Law Ordinance, *Laws of Hong Kong,* 1971 Rev. Ed., Cap. 88; Law of England (Application) Law, *Laws of the Western Region of Nigeria* (1959), Vol. 3, Cap. 60. And, in the local context, see section 3 of the Malaysian Civil Law Act, 1956 (Revised -1972) and the Application of Laws Enactment, *Law of Brunei* (1951), Vol. 1, Cap. 2.

16 See, also Phang, *supra,* note 11, at p. cxx.But cf. the views expressed by Michael F.Rutter in his very recent book entitled *The Applicable Law in Singapore and Malaysia - A Guide to Reception, Precedent and the Sources of Law in the Republic of Singapore and the Federation of Malaysia* (1989), especially at p. 136, where the learned author states thus: "Such retroactive deeming legislation would inevitably give rise to problems of its own. What would become of all those cases which have held that particular rules of English law were not received, for one reason or another - local to England, injustice, inconvenience, circumstances not admitting, etc? Would the new statute incorporate these exceptions? How would they be drafted? Would the new statute not have the effect of 'regressing' the common law in Singapore, in the sense that the statute could be construed as an implied repeal of the post 1826 developments of the common law, as these have been held to apply in Singapore? After all, it is a principle of statutory construction that Parliament does not intend to achieve nothing

with. [17] Secondly, even if a 'theoretical cutting' of the ' apron strings' were desirable, the (perhaps unfortunate) 'reality' remains to the effect that English law is still perceived as well as utilized by the local legal profession as a basis for research, advice and argument. [18] Thirdly, there are, in any event, very persuasive historical as well as other reasons to the effect that the Second Charter of 1826 introduced English law in any event, as mentioned above. If this, however, be the case, the enactment of such a statute would be to merely confirm what has always been the *legal* position

- to 'beat the air', as it were - and if the courts take the view that the Second Charter had already introduced English law, (as they already have done), it would seem to follow that a modern statement that the common law was deemed to have been introduced as of the date of the Second Charter must mean something more than has already been achieved by the courts. One obvious possibility is that Parliament intended to override the later common law developments. This is not to suggest that such a construction is desirable or inevitable, but merely to highlight some of the more obvious risks associated with such 'reverse housecleaning'.... Surely the position is that even if Gopal is correct in asserting that English law was not received under the Second Charter and/or was not continued by the Third Charter, the actions of the courts in adopting English law have achieved the introduction which the Charters allegedly failed to do? Andrew Phang Boon Leong would be the first to acknowledge this, for he notes that 'Even where there are no reception provisions whatsoever, English-trained judges have quite blatantly imported English law into their decisions'..."

A detailed reply to the various interesting points made in the above quotation is obviously outside the purview of this more general article. Some arguments to the contrary, however, might, in summary, include the following: first, that, as suggested below, the proposed Act should , in fact, incorporate the exceptions mentioned above; secondly, that there is, as pointed out below, no strong reason why the proposed Act should not merely confirm what has always been the legal position in any event, the avoidance of (at least theoretical) uncertainty and potential (albeit admittedly remote) practical anxiety being, in itself, a sufficient reason for such enactment; thirdly, that the enactment of such a statute could not impliedly repeal post-1826 common law developments in any event simply because such English developments could have been legitimately embraced in a voluntary fashion by the local courts, although they could not have been (in a sense, involuntarily) binding upon such courts as being part of the corpus of Singapore law; however, once voluntarily adopted, such English law *then* became part of the corpus of Singapore law; fourthly, that the learned author himself admits that such problems as he points out are not inevitable; and, finally, to argue that the local courts have, in any event, "achieved the introduction which the Charters allegedly failed to do" simply returns us back to the question of legal validity (as opposed to *de facto* adoption which I have just mentioned, and which, presumably, the learned author is in fact referring to), and, perhaps more importantly, at least hints at a 'practical approach' that might encourage a lack of interest in (or at least lack of discussion of) local 'roots' (see, *supra,* note 13).

17 Professor Bartholomew points to the factors of *time* as well as the need for *legal literature:* see Bartholomew, "The Singapore Legal System", *supra,* note 1, at pp. 107 to 109. Professor Bartholomew has also stated that there might be"... an authoritative determination of which English statutes are applicable, such as has been accomplished in other countries faced with the same problem, the text of which should preferably be printed in The Singapore Statutes, and as a consequence a sweeping away of all reception provisions": see Bartholomew, "The Singapore Statute Book", *supra,* note 1, at p.15. My proposed solution does not, it is submitted, differ radically, in substance at least, from the learned professor's suggestion, although I am of the view that taking the entire situation into account (including that relating to the reception of common law principles), it is preferable - for the interim period at least - to list the applicable English statutes, as suggested below.

18 See, *supra,* note 2.

in any event. Finally, the enactment of such a statute would not, it is submitted, lead to the stifling of autochthonous development in so far as the local courts would not be precluded from considering other decisions decided by courts in other jurisdictions as well. The ideal should be viewed as *the construction of a rational and coherent (albeit eclectic) Singapore legal system that is best suited to the needs and circumstances of the country, with English law as the logical as well as realistic starting-point.* As Professor Bartholomew has pertinently pointed out, the attainment of such an ideal necessarily requires time, and it is submitted that the period could, in fact, span several generations of the legal profession.[19] We should thus aim for a `reality' where, whilst English law serves as a convenient `base' during the transition toward an autochthonous Singapore legal system, all concerned in the development of the legal system would constantly strive toward the reduction of reliance on English legal materials. There is, in fact, at least one main way of reducing reliance on such materials. It is self-evident, but has not been generally observed, as a cursory glance at the cases cited in local decisions will demonstrate. It is that *local* cases should be cited even where they do no more than restate the English position. It is admitted that such citation might not often aid in a substantive fashion, but it is my view that such citation will, in fact, aid in the cultivation of an *attitude of mind* that would desire, and thus be *naturally* quick to seize upon, every opportunity for developing an autochthonous Singapore legal system.

Even if the suggestions canvassed above are accepted, there remain other problems. What, for example, would be the 'cut-off date' for the general reception of English Law? There has been some controversy with regard to the precise point in time, although the better view appears that the 'cut-off date' should be *1826,* the date the Second Charter was promulgated.[20] It is suggested, therefore, that it be clearly stated that English law (and thus statutes) should, *subject to other legislative enactments such as section 5 of the Civil Law Act,* be received as at 1826. Whatever the ultimate correctness of this decision, it is, in my view, desirable that a 'cut-off date' be formally instituted in order to define a 'fixed pool' of the received English law that would constitute the initial corpus of Singapore law from which further development can be effected.[21] The choice of the 'cut-off date' would, of course, be, in the final analysis, a policy choice on the part of the local legislature, although it is submitted, once again, that, having regard to the significance of the Second Charter in the context of Singapore, the `cut-off date' should be fixed as at 1826, any other possibility being necessarily an *at least equally arbitrary* choice in any event;

19 See Bartholomew, "The Singapore Legal System", *supra,* note 1, at p. 107.

20 See the arguments in Phang, "Of 'Cut-Off' Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore", *supra,* note 1, especially at pp. 243 to 245.

21 *Ibid.,* at pp. 243 and 266.

in summary, therefore, any post-1826 English statute would *not* be received as part of the corpus of Singapore law. This 'cut-off date' can, and should, *also be incorporated in the Reception of English Law Act proposed above.* Problems might, however, arise with regard to the *common law,* the main argument being that the common law, being 'timeless', ought not to be subject to such a 'cut-off date'. This particular problem requires much further (even jurisprudential) elaboration, and is thus outside the more modest scope of the instant article. It suffices, for the present at least, to point out that there are equally plausible arguments as to why a 'cut-off date' *ought* to be applied *vis-a vis* the common law as well.[22] And if this argument be accepted, a subsidiary problem arises with regard to the *statutory definition* of the "common law". It is submitted that this should pose relatively few problems, simply because definitions of "written law" already existing in local statutory (and even constitutional) precedents;[23] the "common law" could therefore be defined in *a negative sense* as including every law that was not subsumed within the definition of "written law". It ought also to be noted that there is in fact, a definition of the "common law" in section 2(1) of the Interpretation Act[24] that is, however, not very helpful in so far as it is defined as "the common law of England". There ought not, in any event, to be too many problems as the "common law" is readily recognizable by legal personnel, although it is somewhat more difficult to define, and that a broad definition such as that contained in the Interpretation Act might therefore suffice.

Yet another problem concerns the moulding and shaping of the received English law to suit the local circumstances. The concepts of suitability or applicability on the one hand and modification on the other are of vital importance in this regard -*i.e.,* that the English law concerned would not be received if unsuitable to the circumstances of Singapore and that, if otherwise suitable to the local circumstances, would nevertheless be modified if to apply it would result in injustice or oppression to one or more of the various ethnic groups.[25] Some might, however, argue that both these concepts (or the latter, at least) are devoid of any current significance in so far as they are premised on the avoidance of injustice and oppression *vis-a-vis* the then 'native' population. It is, however, submitted that these concepts ought nevertheless to be retained and applied inasmuch as they provide the 'tools' for shaping the received English law in order to construct an autochthonous Singapore legal system.[26] It is therefore suggested that the concepts of suitability and modification be somehow incorporated within the proposed Reception of English Law Act. *Problems,* however, arise with regard to this particular aspect, which problems do not arise with regard to both the actual reception as well as the 'cut-off date' discussed above.

22 See *ibid.,* at pp.246 to 247.

23 See section 13(7) of the Republic of Singapore Independence Act (Act No. 9 of 1965); section 2(1) of the Interpretation Act, Cap. 1,1985 Rev. Ed.; and Article 2(1) of the Constitution of the Republic of Singapore.

24 Cap. 1,1985 Rev. Ed.

25 See Phang, *supra,* note 20, at p.249.

26 See, *supra,* note 20, at pp. 260, and 265 to 266.

First, what *factors* are to be taken into account in determining the suitability of the English law in question? The conundrums generated in the sphere of the common law are particularly acute.[27] I am of the view that the very nature of the enterprise itself is such that there *cannot* be a satisfactory *general* solution. There may, however, exist a more concrete attempt at resolution of the problem *vis-a-vis* pre-1826 English *statutes*. One approach might be to legislatively confirm the concepts of suitability and modification (as just argued for), and to then allow the *local courts* to determine the applicability or otherwise of the English act on a necessarily ad hoc basis. An alternative solution would be to *adopt a list of pre-1826 English statutes, as determined on policy grounds.*[28] Should such an approach be adopted, it is submitted that the task is best left to the *legislature* which will then amend the list as and when necessary. If this process is perceived as being too inflexible, an alternative would lie in allowing such changes in the list itself to be effected by way of *subsidiary legislation.* The significant difference between this and the former approach is this - that instead of placing the onus on the local courts to decide whether any particular English statute is received in the local context, the second approach ensures that the policy decision is pre-determined, as it were, by the legislative branch of government. This latter approach might be justified and preferable for at least two reasons.

First, given the fact that the local legislature is unable to re-enact all the pre-1826 English statutes that are suitable to the Singapore context, this might be a good compromise interim measure until such time when the legislature feels that the local statutes are sufficient, in and of themselves, to constitute the corpus of Singapore law. This reason is, of course, double-edged, for it might be equally persuasively argued that there is no need for such a list; in so far as the local legislature has determined, on policy grounds, that certain pre-1826 English statutes are suitable to be received as part of Singapore law, it should, without more, locally re-enact such statutes. Whilst this is not an unpersuasive argument, it is submitted that such an approach does not provide the necessary flexibility that a 'list approach' would supply. In particular, it would be much more awkward should an English act that appeared suitable at first blush later prove to be in fact unsuitable. If the 'list approach' is adopted, the act could be deleted from the list - a solution that is of especial convenience if it can be effected via subsidiary legislation. If, however, the English statute were already re-enacted as a local statute, its removal from the 'Singapore Statute Book' would entail a repealing act that would merely *highlight* the mistake made.

Secondly, and more importantly, the allocation of the task of determining the applicability of English acts to the legislature instead of the courts would probably be considered as being more legitimate since the courts are traditionally perceived

[27] See Phang, *supra,* note 20, especially at pp. 260 to 261.
[28] And see, generally, *ibid,* at pp.261 to 262.

as basing their decisions upon rules and principles in accordance with the well-established doctrine of *stare decisis,* with adventurous forays being held to a minimum, whilst the legislature, on the other hand, is traditionally perceived as being the legitimate formulator of policy decisions.[29] In any event, it would not be in the least startling if the local legislature were to deal with the reception of English *statutes*! Critics might, however, point to, *inter alia,* the lack of time on the part of the local parliament. This need not, it is submitted, be a fatal problem, for the legislature could, in fact, have their efforts supplemented by such organizations as the Law Revision Committee set up by the Academy of Law, amongst others. It ought to be observed at this juncture that under the specific reception of English commercial law under section 5 of the Civil Law Act[30] which will be discussed below, the local legislature did in fact empower the *courts* to effect "such modifications and adaptations as the circumstances of Singapore may require" with regard to the received English law.[31] Given this example, it is submitted that the suggestion just made in the sphere of general reception ought not to engender any undue anxiety and ought, in fact, to inspire confidence instead.

However, it should be noted that inso far as the *common law is* concerned, the issue with regard to the application of the concepts of both suitability and modification *must necessarily remain an open one, so that, in this context at least, the courts will be in full charge.* Given that this is a situation concerning the *common law,* there ought to be no real objections on principle in any event.

There is a further related issue that arises with regard to the issue of suitability and modification, and this concerns *the time at which* the concepts of suitability and/or modification are to be applied. This issue centres, in substance, around yet another facet of the concept of the 'cut-off date', and is of no mean importance simply because of inevitable changes in local circumstances between the date of promulgation of the English statute and the date the case is actually heard in court (assuming, as is necessary under the present interpretation, that the application of the concepts lies with the courts, which is clearly the case at least in so far as the common law is concerned). Once again, it is my view that the relevant 'cut-off date', being in the final analysis a policy choice to be arrived at after a careful consideration of the various factors and circumstances, ought to be embodied within the Reception of English Law Act proposed above. No definitive view as to a 'cut-off date' is presently preferred, although the following possibilities have been considered, *viz.*:[32]

1. The 'cut-off date', *i.e.*, 1826, as suggested above.

[29] One fervent advocate of this view has been Ronald Dworkin: see, generally, his works as follows: *Taking Rights Seriously* (1978); *A Matter of Principle* (1985); and *Law's Empire* (1986).

[30] Cap. 43, 1988 Ed.

[31] See section 5(3)(a).

[32] See Phang, *supra,* note 20, especially at p.257

2. The date when the local courts first considered the English rule in question.

3. The present, *viz.,* the date when the cause of action arose or the date of trial of the action. In this regard, it is submitted that the former is the more reasonable construction and should therefore be adopted.

Without re-opening rather complex issues that have in fact been already canvassed elsewhere, it will suffice to state that the most workable solution appears to be embodied in the *third* possibility in so far as it does not suffer from problems of either proof of (here, historical) circumstances or inflexibility (or 'freezing') of the statute in time.[33] There is, however, a difficulty with the adoption of the third approach which is this - that there might be a danger of the other extreme of excessive uncertainly in as much as English law could be held either suitable or unsuitable as local circumstances change over time. Such a problem only arises if we implicitly assume that it is the *courts* that determine the suitability (or otherwise) of the English statute in question. However, in so far as *statutes* are concerned, I have suggested that it ought to be the *legislature* that determines the suitability of any particular pre-1826 English act, which results would be manifested in a list that could be amended (in appropriate circumstances) over time. If this be the case, then the argument from excessive uncertainty just mentioned would not pose any problems in this regard. In this context, therefore, the third possibility should be incorporated as a *guideline* for the *local legislature,* which guideline could be incorporated in an *Appendix* to the Reception of English Law Act mooted above. This guideline would quite obviously have to be re-worded to take account of the changed (here, *legislative)* context, and might run something like this (at least in so far as substance is concerned):

> "The relevant time for considering the concepts of suitability and modification shall be the present, and the Legislature shall take into account all relevant local factors in arriving at its decision with regard to the question whether the English statute concerned ought to be part of Singapore law. This is without prejudice to a re-consideration of the applicability of the statute concerned in the future."

In so far as the *common law* is concerned, however, *and* assuming that there *is* a 'cut-off date' for the common law, it is submitted that the Reception of English Law Act should also allow the *courts* to proceed upon a similar basis, notwithstanding the fact that there might be the danger of excessive uncertainty.

The discussion thus far leads us to yet another related point - the issue as to the *extent* to which the legislature ought to be allowed to modify a particular English

[33] *Ibid.,* especially at pp. 257 to 258.

statute that it deems to be otherwise suitable to the local context. This really raises the issue of *severability*[34] which finds, in fact, its most problematic manifestation in the context of *specific* reception which will be considered later. It is my view that no *express constraint* need be imposed upon the local legislature. To do so would be, in effect, a contradiction in terms - the local parliament comprises members elected by the people under the democratic process, and it thus has the mandate of the people to determine the statutory framework of Singapore, in so far as the acts concerned do not contravene the provisions of the Constitution.

One final point - to what extent ought *English decisions construing received English statutes* be part of the corpus of Singapore law?[35] It has been suggested thus:[36]

> "A suggested solution has been to accept all pre-reception decisions... as binding but post-reception decisions as not binding since in the latter situation, the local courts possess *equal* authority to construe the English statutes concerned. It is submitted that this is a tenable proposition that also gives effect to the concept of a 'cut-off' date."

It is submitted that the abovementioned solution is reasonable and logical and ought therefore to be adopted in the Reception of English Law Act mooted above.

As a digression, it might be of use in the construction of an indigenous or autochthonous Singapore legal system that the proposed Reception of English Law Act also provide that *no non*-Singaporean decision ought to have any binding effect whatsoever in the local context.[37] This also leads, of course, to a consideration of other problems with regard to judicial precedent in the *local* sphere,[38] especially with regard to the binding effect of decisions of courts of co-ordinate jurisdiction -

34 *Ibid.,* at pp. 250 to 251.

35 *Ibid.,* at pp. 247 to 249.

36 *Ibid.,* at pp. 248 to 249.

37 See, generally, Andrew Phang Boon Leong, "'Overseas Fetters": Myth or Reality?" [1983]2 M.L.J. cxxxix; Peter Wesley-Smith, "The Effect of *De Lasala* in Hong Kong", (1986) 28 Mal. L.R. 50; and Robert C. Beckman, "Divergent Development of the Common Law in Jurisdictions which Retain Appeals to the Privy Council", (1987) 29 Mal. L.R. 254. For various conceptual problems, see Phang, *supra,* note 20, at pp. 262 to 265.

38 See, generally, Harbajan Singh, "*State Decisis* in Singapore and Malaysia - A Review", [1971] 1 M.L.J. xvi; Mohd. Naseemudin Ahmed, " 'Stare Decisis' and its Development in Malaysia", (1975)2 J.M.C.L. 59; Max Friedman, "Unscrambling the Judicial Egg: Some Observations on *Stare Decisis* in Singapore and Malaysia", (1980) 22 Mal.L.R.227; Walter Woon, "Precedents that Bind-A Gordian Knot: *Stare Decisis* in the Federal Court of Malaysia and the Court of Appeal, Singapore" (1982) 24 Mal. L.R. 1; and, by the same author, "*Stare Decisis* and Judicial Precedent in Singapore" in Chapter 4 of *The Common Law in Singapore and Malaysia* (Edited by A.J. Harding, 1985) as well as (more recently) "The Doctrine of Judicial Precedent" in Chapter 8 of *The Singapore Legal System* (Edited by Walter Woon, 1989); and Andrew Phang, "*Stare Decisis* in Singapore and Malaysia: A Sad Tale of the Use and Abuse of Statutes", (1983) 4 Sing. L.R. 155.

problems that are clearly outside the scope of the present piece, although it might be mentioned that one writer has advocated that the 'Gordian knot' be cleanly cut, with no decisions binding Singapore courts;[39] and if this be the case, it would appear that the proposed Act could effect this (albeit unrelated) reform as well.

Let us turn, now, to a consideration of specific reception of English statutes, in particular, to a discussion of the 'notorious' section 5 of the Civil Law Act.

Specific Reception

As a preliminary point, it should be noted that apart from section 5 of the Civil Law Act, which effects the reception of English *commercial* law into Singapore, there are a few other specific reception provisions that deal with rather more specialized areas of the law.[40] I do not propose any reform with regard to these latter provisions not only because they are merely 'gap-filling' in nature but also because these 'gaps' will not be covered, at least in so far as English statutes are concerned,[41] under the process of general reception described above; this is due to the concept of the 'cut-off date' which, as may be recalled, prohibits the reception of any post-1826 English statute, whilst such 'gap-filling' provisions provide for a *continuous* reception of English law and are thus more 'faithful' to the 'spirit' behind the provisions themselves.

Section 5 of the Civil Law Act itself provides for the *continuous* reception of English *commercial* law - which is rather important in the light of the fact that Singapore is an important centre of trade and finance, and whose legal system must thus be in constant tune with the latest commercial development in (here, English) law. And it is to section 5 that our attention must now turn. It ought, however, to be mentioned, as another preliminary point of sorts, that notwithstanding certain reservations recently expressed, the legislative history behind section 5 at least strongly suggests that it was intended to ensure that there was statutory authority for the reception in the then Straits Settlements (of which Singapore was a part) of *post* 1826 *English mercantile statutes* (and decisions thereon) that could not otherwise have been legitimately received by virtue of the Second Charter of Justice because of the 1826 'cut-off date' already considered.[42]

39 Walter Woon, "Precedents that Bind-A Gordian Knot: *StareDecisis* in the Federal Court of Malaysia and the Court of Appeal, Singapore", *supra,* note 38, especially at pp.22 to 25.

40 See, *e.g.,* section 5 of the Criminal Procedure Code, Cap. 68, 1985 Rev. Ed.; section 101 (2) of the Bills of Exchange Act, Cap. 23, 1985 Rev. Ed.; and section 85 of the Women's Charter, Cap. 353, 1985 Rev. Ed., See, also, Bartholomew, "The Singapore Statute Book", supra, note 1, at pp. 14 to 15.

41 Though it should be noted that section 101(2) of the Bills of Exchange Act (see, *supra,* note 40) only supplements with regard to the common law.

42 See, generally, Soon and Phang, *supra,* note 1, at pp. 35 to 41. But *cf.* Tan Yock Lin, *supra,* note 1, at pp. 289 to 291.

The problems generated by section 5 are far too many and difficult to canvass in any detail, especially given the constraints of space and time.[43] Only what are perceived as the more major conundrums will therefore be mentioned. The focus of this part of the article will be confined, instead, to *proposed reforms.*

For ease of understanding as well as reference, the section itself is set out below, the italics indicating amendments effected in 1979[44] which actually complicated, rather than simplified, matters:

"5(1) *Subject to the provisions of this section,* in all questions or issues which arise or which have to be decided in Singapore with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law *with respect to those matters* to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any law having force in Singapore.

(2) Nothing *in this section* shall be taken to introduce into Singapore -

(a) Any part of the law of England relating to the tenure or conveyance or assurance of, or succession to, any immovable property, or any estate, right or interest therein;

(b) *any law enacted or made in the United Kingdom, whether before or after the commence of the Civil Law (Amendment No. 2) Act 1979*[45] -

(i) *giving effect to a treaty or international agreement to which Singapore is not a party; or*

(ii) *regulating the exercise of any business activity by providing for registration, licensing or any other method of control or by the imposition of penalties; and*

(c) *Any provision contained in any Act of Parliament of the United Kingdom where there is a written* law *in force in Singapore corresponding to that Act.*

(3) *For the purposes of this section* -

(a) *the law of England which is to be administered by virtue of subsection (1) shall be subject to such modifications and adaptations as the circumstances of Singapore may require; and*

[43] See, generally, the literature cited at note 1, *supra.*

[44] Via the Civil Law (Amendment No. 2) Act 1979 (Act. No. 24 of 1979).

[45] *I.e.,* 5 October, 1979.

(b) *a written law in force in Singapore shall be regarded as corresponding to an Act of Parliament of the United Kingdom under paragraph* (c) *of subsection (2) if (notwithstanding that it differs, whether to a small extent or substantially, from that Act) the purpose or purposes of the written law are the same or similar to those of that Act."*

The problems generated by section 5 are, as already mentioned, manifold and multifarious. The difficulties begin right at the outset *vis-a-vis* the legislative history and purpose behind the section itself. It is not proposed that we re-cover already well-trodden ground, and we should thus proceed to consider the more practical problem of *characterization.*[46]

This problem, like many others under section 5, is in the final analysis, an intractable one. This is due to the fact that there are two conflicting approaches as exemplified by two cases decided by the Judicial Committee of the Privy Council many decades ago. The first approach, as embodied within the case of *Seng Djit Hin* v. *Nagurdas Purshotumdas & Co.*[47] appears to stand for the proposition that in order to ascertain whether an issue relating to, say, mercantile law has arisen, one has to look at the nature of the transaction concerned, taking into account the nature of the subject matter concerned. This approach engenders, by its very nature of the subject matter concerned. This approach engenders, by its very nature, a relatively high degree of uncertainty. The second approach is to be found in the decision of *S.S.T. Sockalingam Chettiar* v. *Shaik Sahied bin Abdullah Bajerai*[48] that appears to stand for the proposition that in order to ascertain whether a relevant issue has arisen so as to bring the section into operation, one has, instead, to look at the nature of the act or statute sought to be received. In order, for example, to ascertain whether an issue has arisen with regard to the last (and general) category of "mercantile law generally", the court will have to ascertain whether the act sought to be applied is part of the mercantile law. Whilst simpler, this approach tends not only to be inconsistent with the ostensible legislative purpose of section 5 but also leads, in *substance,* to a *permanent importation* of the English statute concerned, thus being rather inconsistent with the express language of section 5(1) itself.

A related problem concerns the determination of *what law is to be administered,*[49] and is closely related to the issues already canvassed in the preceding paragraph with regard to the problem of characterization. Adoption of the approach in *Seng Djit Hin* leads, in effect, to what one writer has described as a "teleportation" approach whereby the *whole* law of England is potentially applicable to the local case at hand. The *Sockalingam Chettiar* approach, on the other hand, is quite different; by its very nature, this approach would entail applying the very statute (or sections

46 See, generally, Soon and Phang, *supra,* note 1, at pp. 41 to 48.
47 [1923] A.C. 444.
48 [1933] A.C. 342, [1933] S.S.L.R. 101.
49 See Soon and Phang, *supra,* note 1, at pp. 50 to 54.

thereof) concerned that are, of course, part of the English mercantile law - an approach that appears to have the support of the 1979 amendments.

Yet another related problem (especially *vis-a-vis* the approach in *Sockalingam Chettiar*) is to ascertain what exactly is meant by the term "mercantile law".[50]

Further problems include how to ascertain whether"... in any case other provision is or shall be made by any law having force in Singapore", such provision having a 'displacing effect', so to speak, preventing reception of the English law sought to be introduced via section 5. And the construction (as opposed to the application) of this final 'limb' of section 5(1) is itself problematic - *inter alia,* whether the word "law" in this final 'limb' includes the common law.[51] A further conundrum relates to the construction section 5(3) (b) read together with section 5(2)(c) which contain a more *specific* 'displacing' effect in so far as when there is a local written law in force corresponding to an Act of Parliament of the United Kingdom, the latter will not be received under section 5 itself. These particular provisions, introduced via the 1979 amendment, have generated many problems of construction as well as application which will not, owing to constraints of space, be elaborated upon in the present piece.[52]

As with general reception, problems of severability and suitability also arise - which problems appear to have been solved, in part at least, by section 5(3) (a) which was introduced by the 1979 amendment.[53]

There are other miscellaneous problems as well - a discussion of which may be found in the relevant secondary literature.[54]

We have, however, spent sufficient time on the many difficulties generated by a surprisingly hardy provision. In a recent article, I attempted to 'apply' section 5 to a selection of English contract statutes that have traditionally been assumed to apply in the Singapore context.[55] The results were, as expected, inconclusive - a not surprising result in view of the degree of complexity of the problems as very briefly recounted above. I thus proposed a reform as follows:[56]

"The proposed reform is simple. *The Singapore legislature should re-enact the*

50 *Ibid.*,at pp.48 to 50.
51 See, *ibid.,* at pp. 57 to 62.
52 See, generally, *ibid.*, at pp. 64 to 68.
53 See, *ibid.,* at pp. 54 to 57.
54 *Ibid.,* at pp.68 to 71.
55 Andrew Boon Leong Phang, "Theoretical Conundrums and Practical Solutions in Singapore Commercial Law: A Review and Application of Section 5 of the Civil Law Act", (1988) 17 Anglo-American Law Review 251.
56 See Phang, *supra,* note 55, at p. 290 (emphasis in original text).

various English contract statutes, thus obviating all the problems associated with section 5 of the Civil Law Act."

Certain *other* reforms had in fact been hitherto proposed. There had, for example, been suggestions that section 5 be repealed altogether and that there be either an enactment of local commercial legislation or the listing of English statutes that are considered either in force or not in force in Singapore.[57] Such suggestions have, however, been made on a rather abstract or theoretical level, so the argument in that particular article went; it proceeded to argue that, in the final analysis, the most *practical* approach was as outlined in the above quotation in so far as it constituted *"concrete legislative* action in a *manageable* area".[58]

Given the undoubted theoretical as well as practical conundrums that bedevil both the construction as well as application of section 5 itself, it is submitted that the reform just proposed ought to be adopted by the local legislature. Indeed, certain English acts, such as the Sale of Goods Act 1979 and the Misrepresentation Act of 1967 could, in my view, be easily re-enacted in the local context.[59] In fact, as far back as 1969, a question was asked in Parliament with regard to the local re-enactment of the latter statute.[60] The Minister's reply was as follows:[61]

"The scope of this Act, which has effected some improvements in the law, is far-reaching, not only altering the substantive law but conferring very wide discretionary powers on the courts. *The Member will also be aware that the amendments to the law have been the subject of considerable comment and criticism in the United Kingdom. In the circumstances, it is desirable that a careful study of the Act and its effects as shown by the experience of the courts in England should be made before similar legislation is introduced in Singapore."*

There have, in fact, been relatively few complaints in England itself; in any event, the Act concerned is still on the English statute book. It is respectfully submitted that the Act could now be usefully re-enacted, and as an *improved 'version'* at that in so far as the local Act could clarify certain doubts that still exist *vis-a-vis* the English statute - for example, whether the damages recoverable under section 2(1) of the Act should be the contract or the tort measure; or, to take another example, whether section 2(2) (which allows the court a discretion to award damages in lieu of recission) operates to 'yield' damages where the right to recission has been barred

57 See, *e.g.,* Soon and Phang, *supra,* note 1, at pp. 72 to 73; and Woon, *supra,* note 1, at pp. 18 to 23, and 156 to 161, respectively.

58 Phang, *supra,* note 55, at p. 255 (emphasis in original text).

59 The arguments in the remainder of the present Section ar taken from Phang, *supra,* note 55; for a much more detailed exposition covering, *inter alia,* more English acts, see Parts III and IV of that article.

60 See *Singapore Parliamentary Debates,* Vol. 28, at Col. 1008 (10 April 1969).

61 *Ibid.* (emphasis mine).

under the common law.[62] Other examples of English statues that could be enacted in the local context include an equivalent, so to speak, of section 1(1) of the U.K. Family Law Reform Act 1969 which deals with the age of majority; the issue regarding the age of majority was in fact one of the issues that was tackled in *Moscow Narodny Bank Ltd. v. Ko Teck Hin (widow).*[63] The case just mentioned, however, adopted the broader *Seng Djit Hin* approach toward characterization, whereas an application of the *Sockalingam Chettiar* approach would, it is submitted, have resulted in a *different* decision altogether. A *legislative resolution* would, in the circumstances, be most welcome. It should be noted that our neighbour, Malaysia, has its own age of majority legislation,[64] and there is no real reason why we should not enact our own Age of Majority Act as well.

Admittedly, however, there are certain English Acts that we cannot re-enact, at least in their entirety; these would, in my view, include the Unfair Contract Terms Act of 1977.[65]

As an at least *transitional position,* it might, as already proposed above, be better to *retain* section 5, *but nevertheless proceed to re-enact in the local context those English Acts, the applicability and desirability of which pose few, if any, problems.* And lest there be fears that we are venturing into totally unchartered territory, one prior local precedent pertaining to the local enactment of an English contract statute may be cited. This is our *Frustrated Contracts Act.*[66] The genesis of the Act, which dates back to 1959, is extremely interesting as well as instructive. During the Second Reading of the Bill, the then Attorney-General, Mr. E.P. Shanks, observed thus:[67]

> "For strictly mercantile contracts, the principles of this Bill already apply by reason of section 5 of the Civil Law Ordinance which imports the English Law for mercantile and similar purposes into Singapore, and so gives effect to the Frustrated Contracts Act of 1943 of the United Kingdom on which the Bill is based.
>
> This Bill will give general application to the modern principles of the United

62 And see, generally, Phang, *supra,* note 55, at Part IV.

63 [1982] 2 M.L.J. xcviii.

64 *I.e.,* the Age of Majority Act 1971 (Act 21) which repealed the Age of majority Act 1961 (No. 9 of 1961). Prior to the 1961 Act itself, there were four similar acts, *viz.,* the Age of Majority Enactment, Cap, 68, Laws of the Federated Malay States, 1932 Rev. Ed., Vol. II; the Age of Majority Enactment, Enactment No. 135, Laws of the State of Johore, 1935 Rev. Ed., Vol. III; Enactment No. 62 (Majority), Laws of the State of Kedah, 1934, Vol. III; and the Majority Enactment, Cap. 35, Laws of Trengganu, 1941 Rev. Ed., Vol. I. At present, the age of majority under the 1971 Act is eighteen years.

65 See, generally, Phang, *supra,* note 55, at Parts III and IV.

66 Cap. 115, 1985 Rev. Ed.

67 *Singapore Legislative Assembly Debates,* Vol. 9, at Col. 1759 (22 January 1959).

> Kingdom, 1943, Act, which the Federation of Malaya has already adopted, and will enable the Courts to make adjustments between parties to a contract that can no longer be continued. In some respects, it will re-establish a principle of ancient Roman law in which a doctrine of restitution found favour."

It is noteworthy that section 5 is mentioned, for it appears clear from the passage just quoted that (disregarding for the moment at least whether the aforementioned reasoning with regard to section 5 is scrupulously correct) the local legislative assembly decided, *as a matter of policy,* to enact the U.K. Law Reform (Frustrated Contracts) Act 1943[68] in the *Singapore* context. It might also be interesting to note that it made this policy choice with full appreciation of the effect of section 5 and in the absence of any problems in so far as the *suitability* of the Act to local circumstances was concerned.[69]

It should be noted that although the proposed reform only pertains to English *contract* statutes, it ought, by parity of reasoning, to apply to the *rest* of the sphere of *commercial* law as well. For reasons of practicality, however, a logical and manageable starting-point is, in fact, the area of the law of contract. Once again, the exercise entails making policy choices with regard to the question as to which English statutes ought to be enacted. As has, however, been sought to be demonstrated in the article already referred to, there are a great number of English contract statutes that can be re-enacted as local statutes forthwith, simply because they do not pose any substantive difficulties.[70] And given the importance of Singapore as a centre for both trade and finance (as already alluded to above), this ostensible imposition of a burden on the local legislature may well prove to be an inestimable boon in the long term.

It should be acknowledged, however, that, given the proposed reform pertaining to the 'listing' of pre-1826 English statutes in the sphere of *general* reception, it might be argued that a similar approach ought to be adopted, a point alluded to above - *i.e.*, a repeal of section 5 *and* a listing of applicable English commercial statutes. It is, however, submitted that in so far as section 5 concerns the very current and significant area of commercial law and practice, the section itself ought, in the absence of a complete or at least adequate commercial code, to be retained. Why, it might then be asked, not retain section 5 but nevertheless *list* what are perceived to be the applicable English commercial statutes? It is my view that, in the special circumstances, local re-enactment (as already proposed) is preferable for at least three reasons. First, as just mentioned, many of the English contract acts could be

68 6 & 7 Geo. 6, c.40.

69 To quote the Attorney-General again: "The Bill which was published on 12th December has not, so far as I know, been adversely criticized by anyone. It has the support of the Bar Committee and of the Trade Advisory Council, and I have no hesitation in commending it to this House.": see, *supra,* note 67, at Col. 1761.

70 See, *supra,* note 65.

re-enacted locally with few, if any, substantive problems. Secondly - and this is a related point - investor confidence would probably be maintained or even encouraged by the *legislative format* in which the commercial law of Singapore is thus embodied. Finally, to effect a listing *vis-a-vis* English commercial statutes would be to complicate an already complex situation that exists under the sphere of general reception already discussed. The need for *currency* with regard to English commercial statutes would place, it is submitted, too onerous a burden upon the local legislature. As a point of interest, though, it should be noted that there would be a *coincidence* in so far as the reception of pre-1826 English commercial statutes is concerned, with the possible basis of reception lying in both general as well as specific reception, although, given the fact that most significant English commercial acts were enacted much later, this overlap is unlikely to be very significant.

Conclusion

It may be quite clearly discerned from the preceding discussion that there are not a few complex problems generated in the spheres of both general as well as specific reception of English law alike. The task ahead should be to effect both a rationalization as well as systematization of the entire area. To be sure, given the very nature of some of the many problems, a complete 'overhaul' cannot be achieved in the twinkling of an eye. A *start* has, however, to be affected, and it is perhaps appropriate at this juncture to summarize the various reforms proposed during the course of this article.

First, in the realm of *general* reception, it is proposed that there be enacted a *local Reception of English Law Act,* which act would clearly state that English law (both statute as well as common law) has been received, and is therefore part of the corpus of Singapore law, subject to the following limitations:

1. That the English law so received is *as at 1826* which should thus be clearly stated to be the 'cut-off date'; this would mean, for example, that all post-1826 English statutes would *not* be part of Singapore law, and, as a digression but for the sake of completeness, the 'cut-off date' ought, it is submitted, to apply *vis-a-vis* the common law as well. This 'cut-off date' in the sphere of general reception should, of course be made expressly subject to any local legislative enactment to the contrary, which would, in the main, take into account the *continuous* reception of English commercial law under section 5 of the Civil Law Act.

2. That the English law so received is subject to the concepts of suitability or applicability and modification; this requirement would be manifested, in the *statutory* context, via *a list of the pre-1826 English statutes that are deemed to have been received in this regard, i.e., that are deemed to have satisfied, inter alia, the requirements of suitability and modification. It should also be stated in an Appendix to the proposed Reception of English Law Act that the relevant time for consideration of the suitability of the relevant act is the present.* In so far as *changes in the list* are concerned, I proposed that this be effected by either

the legislature *or* via subsidiary legislation. The position at common law, however, necessarily remains fluid, with the local courts being conferred the task of applying the abovementioned concepts; the relevant time for application should, as in the statutory context, be the present.

3. That *only pre-1826 English case-law construing pre-1826 English statutes that have already been received subject to the qualifications just mentioned be considered as part of the corpus of Singapore law.* In addition, it ought to be enacted that *all other non*-Singaporean cases in *every* area be expressly stated (in the proposed Act) as being *not* binding on the local courts.

Secondly, in the realm of *specific* reception, I propose the following:

1. That all so-called 'gap-filling' reception provisions be *continued in force* for reasons that have already been mentioned above.

2. In so far as *section 5 of the Civil Law Act* is concerned, that the section itself be *retained, but* with *local re-enactment* of suitable English statutes in *specific* areas (for example, the law of contract), *until such time that we ultimately have either a satisfactory local commercial code or a set of local commercial laws.* Such local enactments need *not,* of course, be complete 'carbon copies', so to speak, of their English counterparts, but should be modified, where appropriate, in order that 'improved versions' of these English acts may be promulgated in the local context.

As a digression, the Reception of English Law Act mooted here might also deal with other miscellaneous matters, such as the release of local courts from the fetters and (especially) unnecessary complexities of the doctrine of *local stare decisis.*

At bottom, however, any reforms that are effected will not have any practical impact unless the *attitude and psyche* of the legal profession changes - a point already considered right at the outset of this article. Such changes include a new (or renewed) desire to develop Singapore law simultaneously with the resolution of the legal dispute at hand; such a desire would *automatically* result in a sensitivity toward the sources of reception and, consequently, all the possibly applicable English law that may be brought to bear upon the case at hand. To this end, the reforms proposed above are intended, in part at least, to aid the lawyer in his or her endeavours.

Finally, there ought to be more discussion on the applicability of English commercial acts in the context of section 5 of the Civil Law Act. Part of the reason for the apparent avoidance of discussion in this regard probably stems from the fact that the section generates so many rather intractable issues. My proposal is thus that although section 5 ought to be retained in the meantime as a kind of 'stop-gap' measure, the local legislature ought to minimize the uncertainty by re-enacting

English commercial statutes that are (or ought to be) part of Singapore law.

All these changes (and more besides) are long overdue. The entire Singapore legal system has hitherto been functioning without a clear resolution of these very basic issues. This is, perhaps, due to the assumption that the reception of English law in the local context is unproblematic. This assumption is, as I have sought to demonstrate, in the main untrue. We should therefore embark forthwith upon the task of putting the reception of English law on as unambiguous a footing as possible thus solving the manifold problems, a great number of which have been referred to during the course of this article.

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This article is based on a talk delivered at a Singapore Academy of Law Legal Education Workshop on 18 November 1989. I found the entire session most stimulating. This suggests that there is merely a lack of discussion (as opposed to a lack of interest) vis-a-vis the reception of English law in Singapore.