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Cementing the foundations: The Singapore application of English law act 1993

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CEMENTING THE FOUNDATIONS: THE SINGAPORE *APPLICATION OF ENGLISH LAW ACT 1993*

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I. INTRODUCTION

After almost one hundred and seventy-five years since the founding of modern Singapore in 1819,[1] the Singapore Legislature[2] has finally passed the *Application of English Law Act 1993*[3] to clarify the application of English law in the island republic. Prior to the *AELA*, there were numerous areas of uncertainty with regard to both the general as well as the specific reception of English law that led to a plethora of literature—

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1 By Sir Thomas Stamford Raffles. Singapore attained internal self-government in 1959, became part of the Federation of Malaysia in 1963 and finally achieved full independence in 1965.

2 It should, however, in fairness, be pointed out that Singapore had its own domestic legislature only in 1867 when it was part of the then Straits Settlements (comprising Singapore, Malacca and Penang), and then only as a colonial institution.

3 No. 35 of 1993; now Cap. 7A, 1994 Rev. Ed. [hereinafter *AELA*]. The *AELA* came into operation on 12 November 1993 (see Art. 58(2) of the *Constitution of the Republic of Singapore* and s. 10(2) of the *Interpretation Act* (Cap. 1, 1985 Rev. Ed.)).

but little else.[4] The absence of practical activity, so to speak, reflected the pervasive attitude amongst bench and bar alike: the universal acceptance of the fact that the foundation of the Singapore legal system was premised on English law, notwithstanding the numerous problems surrounding the various sources of reception briefly alluded to above. This uninterest in these problems was probably due to the relatively pragmatic cast of mind of lawyers[5]—although this writer has ventured to suggest that this attitude was not only inimical to the development of a distinctly Singaporean legal system,[6] but also ignored both the detrimental substantive as well as psychological impact of the uncertainty generated in the more specific (and, economically speaking, highly important) area pertaining to the reception of English commercial law.[7]

The *AELA* does away with many of the problems and consequent uncertainty that formerly existed. Given its importance as a starting point for legal research, particularly in (but not limited to) the commercial sphere, it is essential reading for both foreign and local lawyers alike. It has, justifiably, been described by the Minister for Law as "one of the most significant law reform measures since Singapore's independence"[8] —and indeed for close on two centuries. Nor has the importance of indigenous development passed unnoticed.[9] Although the basic structure of the *AELA* will be dealt with in detail in Part III below, it might appropriately be observed at this preliminary juncture that the *AELA* not only reiterates that the principles and rules of English common law and equity are applicable but also (and perhaps more importantly) attempts, as far as possible, to encompass all applicable English statutes

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4 The literature is extensive: see generally, A. Phang, "Reception of English Law in Singapore: Problems and Proposed Solutions" (1990) 2 Singapore Academy of L. J. 20 at 20-21, note 1, where the major pieces of literature for both general as well as specific reception of English law in Singapore are cited.

5 See generally, A. Phang, *The Development of Singapore Law—Historical and Socio-Legal Perspectives* (1990) at chap. 3. *Cf.*, also, G. W. Bartholomew, "The Singapore Statute Book" (1984) 26 Mal. L.R. 1 at 12.

6 See Phang, *supra* note 5, especially at 91-96. See also generally, Phang, "Of Generality and Specificity—A Suggested Approach Toward the Development of an Autochthonous Singapore Legal System" (1989) 1 Singapore Academy of L. J. 68.

7 See generally, Phang, *supra* note 4 at 31-38, and Phang, *infra* note 27.

8 The Minister, Prof. S. Jayakumar, stated this during the Second Reading stage of the Bill: see the *Straits Times* (13 October 1993) 17. See, now, *Singapore Parliamentary Debates*, vol. 61 at col. 609 (12 October 1993).

9 The Minister stated that the Government would be taking further steps to amend the local law in order to free it of dependence on English law; he stated that "[w]e must have certainty in our laws and move away from reliance on English law, because we do not know what the conditions are that shape the U.K. decisions": see *ibid.* See, now, *Singapore Parliamentary Debates*, vol. 61 at col. 616 (12 October 1993).

by either listing them or via amendments to local statutes based, in the main, on specific provisions of English legislation.

However, a few problems still remain, even after the passage of the *AELA*. In addition, it is not wholly clear how, insofar as the reception of English statutes is concerned, the final choice of which English statutes were to constitute the law of Singapore was arrived at. This article will give a brief introduction to the problems that existed prior to the passage of the *AELA*. It will then outline the basic structure and approach of the *AELA*. Thereafter, it will describe and analyse the problematic areas which have either not been dealt with or have themselves been engendered by the *AELA* itself; included in this analysis will be an effort to identify the possible bases for the final choice of the English statutes, which bases (as already mentioned) are not clear on the face of the language of the *AELA* itself.

Apart from the inherent nature of the article itself, the reference to materials from other (principally Australian and New Zealand) jurisdictions will, it is hoped, render this piece of interest to comparative lawyers as well. On a practical level, information on the *AELA* would be indispensable to not only Singaporean but also foreign lawyers, all of whom may now advise their clients on Singapore law without having to worry (in the statutory sphere at least) about whether or not a particular English law is applicable in the local context.

II. THE BACKGROUND

A. Introduction

Constraints of space preclude a lengthy review of the complex background surrounding the *AELA*.[10] However, it is clear that the true significance of the *AELA* will not emerge without a brief summary of this background. The background is also important inasmuch as the operation of s. 5 of the *Civil Law Act*[11] (which is considered below under the heading of "Specific Reception"), despite its repeal,[12] is still preserved "[i]n respect of any proceedings instituted or any cause of action accruing before the commencement of" the *AELA*.[13] However, because of the paucity of cases[14] centring on interpretation as well as application

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10 See *supra* note 3.

11 Cap. 43, 1988 Rev. Ed.

12 See s. 6(1) of the *AELA*.

13 See s. 6(2) of the *AELA*.

14 An exception is the recent Singapore High Court decision of *Rai Bahadur Singh* v. *Bank of India*, [1993] 1 S.L.R. 634; see also a comment on this case in A. Phang, "The Reception of

of s. 5 of the *Civil Law Act*, whilst still *theoretically* applicable, it may, with some equanimity, be said that this provision is probably moribund —even defunct—when viewed from a *practical* perspective.

The background is best discussed under two major headings: general and specific reception, respectively. There is also the reception of English law by way of Imperial Legislation. However, because it is relatively less significant at least from the perspective of quantum, it will be considered later, when an analysis is made of the *AELA* itself.

B. General Reception[15]

The general reception of English law in Singapore has been traditionally perceived to have been effected via the *Second Charter of Justice of 1826*; this is, in the main, the result of Maxwell R.'s now celebrated construction of the *Charter* in the leading decision of *R.* v. *Willans*.[16] Despite academic arguments to the contrary,[17] this perception has remained firmly etched in the Singapore legal landscape and has, indeed, been reaffirmed in local case law from time to time.[18] The consequence has been that, prior to the *AELA*, principles and rules of English common law and equity as well as pre-1826 English statutes of general application were applicable in Singapore, subject to the concepts of suitability and modification. Insofar as a "cut-off" date was concerned, it has traditionally been thought that it only applied to statutes with the relevant "cut-off" date being (as the preceding sentence indicates) 1826, the date of the *Second Charter of Justice*;[19] in contrast, the unwritten law, so the popular notion went, was continuous, although I have argued that this is

English Commercial Law in Singapore" (1993) 6 J.C.L. 253. This decision has been very recently affirmed by the Court of Appeal: see *Bank of India* v. *Rai Bahadur Singh*, [1994] 1 S.L.R. 328.

15 See generally, Phang, *supra* note 4 at 22-31.

16 [1858] 3 Ky. 16.

17 See Gopal, "English Law in Singapore: The Reception That Never Was" [1983] 1 M.L.J. xxv; *contra* Phang, "English Law in Singapore: Precedent, Construction and Reality or 'The Reception That Had To Be'" [1986] 2 M.L.J. civ.

18 See *e.g.*, *Supreme Holdings Ltd.* v. *The Sheriff, Supreme Court of Singapore*, [1987] 1 M.L.J. 10 at 13-14; *Ng Sui Nam* v. *Butterworth & Co. (Publishers) Ltd.*, [1987] 2 M.L.J. 5 at 13; *Reidel-de Haen AG* v. *Liew Keng Pang*, [1989] 2 M.L.J. 400 at 402; and *Rai Bahadur Singh* v. *Bank of India*, [1993] 1 S.L.R. 634 at 646, affirmed [1994] 1 S.L.R. 328. Reference may also be made to *Then Kang Chu* v. *Tan Kim Hoe*, [1926] 1 S.S.L.R. 1 at 3.

19 See Phang, *supra* note 4 at 25 and, A. Phang, "Of 'Cut-Off' Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore" (1986) 28 Mal. L.R. 242 at 243-45. See also *Ng Sui Nam* v. *Butterworth & Co. (Publishers) Ltd.*, *ibid.* at 13; and the Explanatory Statement to the Bill, which (in relation to the present s. 7 read with the Second Schedule) refers to derivation from "pre-1826 English enactments" (for an elaboration of these provisions, see the discussion below). See, now, *per* the Minister for Law, Prof. S. Jayakumar in *Singapore Parliamentary Debates*, vol. 61 at cols. 609 and 612 (12 October 1993).

not a notion that is incontrovertible, especially since the Blackstonian declaratory theory is no longer in fashion.[20] There is the further problem as to how to apply the concepts of suitability and modification to individual situations, especially with regard to the factors to be taken into account[21] as well as the time at which these concepts are to be applied since circumstances in the country of reception can, and often do, change over time, thus engendering different results in application of the concepts[22]—not to mention the threshold question as to whether or not there is a substantive distinction between suitability and modification to begin with.[23]

Even from the very summary account given in the preceding paragraph, the reader would have discerned that there is not a little uncertainty surrounding the entire process of general reception—particularly with regard to the reception of English statutes. Even if one left aside the problems of whether or not there was a valid reception in the first instance as well as what ought to be the "cut-off" date (as I have submitted we should),[24] several problematic issues remain, all centring, in the main, on the concepts of suitability and modification. There cannot, in other words, be any certainty what English law will be received and the problem would be obviously more acute in the context of English *statute* law, especially since there are thousands of English statutes that are at least potentially applicable, even given the traditionally accepted "cut-off" date of 1826. For the practitioner, of course, such a situation constitutes a minefield of sorts, if only in occasional cases where an obscure (or even not so obscure) English statute might possibly be applicable in the local context. In this regard, there is a real need for reform and—as we shall see—the *AELA* has contributed much to the resolution of the uncertainty briefly described in the present paragraph.

C. Specific Reception

Specific reception occurs whenever a local statute or, more accurately, a provision thereof provides for English law to be applied. Most of these provisions serve gap-filling functions.[25] However, there is one particular

20 See Phang, "Of 'Cut-Off' Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore," *ibid.* at 246-47.

21 See *ibid.*, especially at 260-61.

22 See *ibid.* at 257-59.

23 See *ibid.* at 249-51.

24 See *supra* notes 17 and 19, respectively.

25 A more detailed analysis is undertaken below when considering the impact of these provisions in the light of the *AELA* itself.

provision that, despite its relatively small size on the local statute book, has not only a function that goes beyond mere gap-filling but has also generated untold problems for almost two centuries; what exacerbates the situation is the fact that it is on this provision—the "infamous" s. 5 of the *Civil Law Act*[26]—that much of Singapore commercial law (arguably the lifeblood of the country) is premised. Once again, constraints of space preclude a discussion of the various problems in any detail,[27] although for the sake of both clarity of discussion and, more importantly, appreciating the significance of the what the *AELA* has accomplished, the provision has to be set out in full:[28]

> 5.(1) *Subject to the provisions of this section,* in all questions 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.
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> (2) Nothing *in this section* shall be taken to introduce into Singapore—
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> (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;
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> (b) *Any law enacted or made in the United Kingdom, whether before or after the commencement of the Civil Law (Amendment No. 2) Act 1979*[29]—
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> (i) *giving effect to a treaty or international agreement to which Singapore is not a party; or*
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> (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*

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26 Cap. 43, 1988 Rev. Ed.

27 Reference may be made to Phang, *supra* note 4 at 31-38 as well as, A. 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-Am. L. Rev. 251, and the literature cited therein. See also, Soon & Phang, "Reception of English Commercial Law in Singapore—A Century of Uncertainty" in chap. 2 of *The Common Law in Singapore and Malaysia* (Ed. Harding, 1985).

28 The italicized portions of the provision indicate amendments introduced by the *Civil Law (Amendment No. 2) Act* (No. 24 of 1979), which merely served to exacerbate, rather than rid or simplify, the problems concerned.

29 *I.e.*, 5 October 1979.

(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*

(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.*

As already mentioned, the problems surrounding s. 5 are far too complex to detail here. There is, for example, the threshold issue as to whether or not the provision allows the common law to be received, although the historical evidence suggests that only *post*-1826 mercantile *statutes* were intended to be received, which statutes could not otherwise have been legitimately received by virtue of the *Second Charter of Justice* owing to the "cut-off" date of 1826 mentioned earlier.[30] There is, unfortunately, case law opinion to the contrary.[31]

More importantly, there is the problem of *characterization*: how, in other words, is the local court to ascertain whether or not an issue relating to one of the enumerated bodies of law, or mercantile law generally (see the language of s. 5(1), reproduced above) has arisen? This issue is closely linked to the next: what law is to be administered? Two irreconcilable decisions from no less an authority than the Judicial Committee of the Privy Council have ensured that this conundrum remains an insoluble one. The earlier decision, *Seng Djit Hin* v. *Nagurdas Purshotumdas & Co.*,[32] appeared to suggest that in order to ascertain whether the relevant issue had arisen, the court had to look at the nature of the transaction concerned, taking into account the nature of the subject matter in question. Such an approach, although faithful to the language of the section, generated (by its very nature) a relatively high degree of uncertainty. Indeed, the Board in that case proceeded to hold that if a relevant issue had arisen, the law to be administered would (potentially at least) be the *entire* law of England. Again, faithfulness to the express statutory language is preserved, but at the obvious expense of

30 See *supra* note 19. See also, Soon & Phang, *supra* note 27 at 35-41.

31 See the Privy Council decision of *Chan Cheng Kum* v. *Wah Tat Bank Ltd.*, [1971] 1 M.L.J. 177 at 179 and *Rai Bahadur Singh* v. *Bank of India*, [1993] 1 S.L.R. 634 at 644. *Cf.*, also, *Then Kang Chu* v. *Tan Kim Hoe*, [1926] 1 S.S.L.R. 1 at 3.

32 [1923] A.C. 444.

a compromise of the independent status residing in the local courts. The second Privy Council decision, *S.S.T. Sockalingam Chettiar* v. *Shaik Sahied bin Abdullah Bajerai*,[33] appeared to take a contrary approach, suggesting that whether or not a relevant issue had arisen depended on whether or not the *statute* sought to be received possessed the salient characteristics.[34] Whilst providing more certainty, such an approach was clearly inconsistent with the literal language of the provision itself. In addition, the very nature of the approach entailed applying, not the entire law of England, but the very statute itself. The interpretive waters were, in fact, muddied further in a recent decision.[35] There are other problems: for example, what exactly is meant by the term "mercantile law"; how one is to ascertain whether "[i]n any case other provision is or shall be made by any law having force in Singapore" and whether the word "law" includes the common law; the related (but more particular) construction of s. 5(3)(b) read together with s. 5(2)(c); the issue of severability and suitability (now to be read in the light of s. 5(3)(a)); as well as other miscellaneous issues.[36]

Enough has been stated to indicate the immense uncertainty that s. 5 has engendered—which uncertainty is wholly undesirable from both substantive as well as psychological points of view, not least because it deals with the core of Singapore commercial law. If nothing else, the presence of two irreconcilable Privy Council cases ensures that uncertainty exists right at the outset. This may explain, in part at least, why there is a dearth of interest in the practical sphere which may, in turn, explain why there have been so few cases turning on the provision itself.[37] Once again, however, the *AELA* has served to completely eradicate such uncertainty, albeit by a method that the present writer does not wholly agree with. What is clear, however, is that there are no longer any more doubts in the commercial context as to which English statutes are part of the law of Singapore and, given the importance of trade and commerce which has already been referred to, this is therefore a landmark piece of legislation. It is, of course, true that, under certain circumstances, s. 5 will continue to be applicable.[38] However, as already pointed out, there will be very little, if any, impact in the practical sphere.[39]

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33 [1933] A.C. 342, [1933] S.S.L.R. 101.

34 In the most general sense, in other words, was the statute a mercantile statute?

35 See *Rai Bahadur Singh* v. *Bank of India*, *supra* note 14.

36 See Phang, *supra* note 4, at 33-34, and the more specific literature cited therein.

37 See *ibid.* at 20-21.

38 See s. 6(2) of the *AELA*; see also, *supra* note 13.

39 See *supra* note 14.

We turn now to a consideration of the basic structure of the *AELA* in the light of the foregoing summary of the background. We will then examine the possible problems that remain although, even at this rather preliminary stage, it can be stated that the *Act* does, on balance, result in more benefits than problems, and that this is clearly so in the practical sphere.

III. BASIC STRUCTURE OF THE *AELA*

A. Purpose

The purpose of the *AELA* is obvious: to lay to rest, once and for all, the uncertainty surrounding the applicability of English law in the Singapore context. Indeed, the Explanatory Statement to the Bill[40] began as follows: "This Bill seeks to remove the uncertainty as to the extent of the applicability of English law to Singapore, particularly in regard to statute law, and to repeal section 5 of the *Civil Law Act*."[41]

We have already seen that the extent of the uncertainty in the spheres of both general as well as specific reception is, in fact, immense—although, at least insofar as the reception of English commercial law under s. 5 of the *Civil Law Act* was concerned, many of the intractable problems were, apparently, avoided by lawyers who, presumably, did not raise such issues in their respective pleadings.

B. Basic Approach

The *AELA* attempts, as far as is possible,[42] to encompass all applicable English laws within its four corners. Indeed, s. 5(1) states that "[e]xcept

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40 Now admissible in local court proceedings to either confirm the meaning of a particular provision or to ascertain the meaning of the provision where there is either ambiguity or obscurity or where giving effect to the ordinary meaning would lead to a result that is manifestly absurd or unreasonable. See in particular the recently enacted s. 9A of the *Interpretation Act* (Cap. 1, 1985 Rev. Ed.) introduced by the *Interpretation (Amendment) Act 1993* (No. 11 of 1993); and see, in this particular context, s. 9A(3)(b), which expressly refers to Explanatory Statements. See also, generally, Beckman & Phang, "Beyond *Pepper* v. *Hart*: The Legislative Reform of Statutory Interpretation in Singapore" (forthcoming in the Statute Law Review).

41 See, also, the first part of the Preamble which states that the *AELA* is "to declare the extent to which English law is applicable in Singapore and for purposes connected therewith. . . ." On admissibility in the context of interpretation, see s. 9A(3)(a) of the *Interpretation Act*. See also, generally, *ibid.* Since this article was written, the official report of the Parliamentary Debates has revealed yet a *further* objective: "[I]t makes our commercial law independent of future legislative changes in the United Kingdom—changes which we in fact have no control": see *Singapore Parliamentary Debates*, vol. 61 at col. 609 (12 October 1993), *per* the Minister for Law, Prof. S. Jayakumar; see also *ibid.* at cols. 611 and 613. It is, however, submitted that the Minister was probably referring to the very real problems centring on the United Kingdom's entry into the European Community (now European Union), which problems were perceived as far back as 1979 when s. 5 of the *Civil Law Act* was amended: see Part II of this article above (*cf.*, also, *ibid.* at col. 616).

42 There may be exceptions embodied within other statutes—a point to be discussed later.

as provided in this *Act*, no English enactment[43] shall be part of the law of Singapore"; and the provisions in the *Interpretation Act*[44] with regard to the effect of repeal of local acts apply equally to English enactments which have, by virtue of the *AELA*, ceased to be part of Singapore law.[45] It should, however, be noted that the *AELA* adopts several simultaneous approaches in order to achieve this all-embracing aim.

First, s. 3 deals with the application of common law and equity, subject to the concepts of modification and suitability. There are possible problems of construction, which will be dealt with below.

Second, s. 4 deals with English *statute* law. Whilst this provision will be dealt with in more detail below, it should be noted here that the net effect of the section is to *list* English enactments that are considered to be part of Singapore law.[46] In this regard, however, where a local statute expressly provides for reception of an English enactment(s), such an enactment will be part of Singapore law;[47] in this sense, therefore, *specific* reception of English law is alive and well although its chief "protagonist," s. 5 of the *Civil Law Act*, has been laid to rest.[48] This does generate some problems, however, which will be dealt with in the next Part of this article. Insofar as the actual list is concerned, one has to refer to the First Schedule of the *AELA*, which is divided into two basic categories. The first comprises Imperial Acts, of which only three are listed in Part I of the First Schedule.[49] The second category concerns English commercial statutes, which are listed in Part II of the First Schedule.[50] These comprise a total of thirteen statutes, which will be dealt with in more detail below. Part III of the First Schedule details

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43 "English enactment" is defined in s. 2 as meaning "an enactment of the Parliament of England, the Parliament of Great Britain or the Parliament of the United Kingdom." Of course this is subject to the usual caveat embodied in the phrase "unless the context otherwise requires," which is also to be found in s. 2.

44 Cap. 1, 1985 Rev. Ed.: see s. 16.

45 See s. 5(2) of the *AELA*.

46 And see the Explanatory Statement to the Bill which stated that clause 4 (now s. 4) "read with the First Schedule specifies the English enactments which are to apply or continue to apply in Singapore subject to the necessary modifications. A number of such modifications are set out in subsection (4) of the clause. The clause also provides that the provisions of any local statute shall prevail in the event of any inconsistency between those provisions and the provisions of any English enactment." See also, *supra* note 4.

47 See s. 4(1)(b) of the *AELA*.

48 See s. 6(1) of the *AELA*; though note the saving in s. 6(2). (See *supra* note 13.)

49 These are the *Territorial Waters Jurisdiction Act, 1878* (U.K.), 41 & 42 Vict., c. 73; the *Maritime Conventions Act, 1911*, 1 & 2 Geo. V, c. 57; and the *Straits Settlements and Johore Territorial Waters (Agreement) Act, 1928*, 18 & 19 Geo. V, c. 23. See generally, s. 4(1)(a) of the *AELA*. But *cf.* Bartholomew, "English Statutes in Singapore Courts" (1991) 3 Singapore Academy of L. J. 1 at 75 where the learned author states that the last mentioned *Act* "has already had its effect."

50 See generally, s. 4(1)(a) of the *AELA*.

amendments to be made to five of the statutes enumerated in Part II of the First Schedule,[51] presumably to ensure that there are no elements which are peculiar to England only; because of their relatively minor as well as non-controversial status, they will not be further discussed in this article. It should also be noted that insofar as the English commercial statutes enumerated in Part II of the First Schedule are concerned, one must be careful to look at the fourth column of that particular Part which specifies the extent of application, although many of the statutes listed in fact apply in their entirety.[52] Finally, it is also stated in s. 4(3) that "[t]o the extent to which any of the provisions of any English enactment[53] is inconsistent with the provisions of any local Act[54] in force at or after the commencement of this Act, the provisions of the local Act shall prevail," whilst s. 4(4) provides, "unless the context otherwise requires," for the substitution of the corresponding local references for references to various U.K. courts as well as statutes.

Thirdly, s. 7 read with the Second Schedule details specific amendments to be made to specific local acts. These amendments comprise a hotchpotch and, appropriately, the title of the Second Schedule is "Miscellaneous Amendments." What is the nature of these amendments? This will be dealt with in more detail in the next Part of this article; it will suffice for the moment to note that these amendments are, in the main,[55] based on specific provisions of English legisla-

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51 These are the *Policies of Assurance Act, 1867*, 30 & 31 Vict., c. 144; the *Unfair Contract Terms Act 1977* (c. 50); the *Supply of Goods and Services Act 1982* (c. 29); and the *Carriage of Goods by Sea Act 1992* (c. 50). And see the latter part of s. 4(2) of the *AELA*. See, also, *per* the Minister for Law, Prof. S. Jayakumar during the Second Reading stage in *Singapore Parliamentary Debates*, vol. 61 at col. 612 (12 October 1993): "Part III of the First Schedule also effects certain amendments to the English commercial Acts to bring them into line with local legislation and local circumstances."

52 It should be noted that there is no problem insofar as the three Imperial Acts are concerned, for they apply in their entirety: see *supra* note 49, as well as the fourth column in Part I of the *Act*. But insofar as exclusion of s. 22 of the *Sale of Goods Act* is concerned which pertains to goods sold in market overt, *cf.*, however, the decision of Lai Kew Chai J. in *Commercial & Savings Bank of Somalia* v. *Joo Seng Company*, [1989] 2 M.L.J. 200 at 202. See also, *Fitzgerald* v. *Luck* (1839), 1 Legge 118 for a valuable discussion of the concept of market overt.

53 For the definition of "English enactment," see s. 2, reproduced *supra* note 43.

54 "'[L]ocal Act' means ["unless the context otherwise requires"] an Act of the Parliament of Singapore and includes any Ordinance or Act of Singapore or of Malaysia having the force of law in Singapore": see s. 2 of the *AELA*.

55 But compare the amendment to s. 43 of the *Extradition Act* (Cap. 103, 1985 Rev. Ed.); the Explanatory Statement is illuminating in that it tells us that the amendment is "to widen the scope of that section to cover any declared Commonwealth country as the United Kingdom *Evidence by Commission Act, 1885* will cease to apply to the taking of evidence in criminal proceedings in Singapore" (see also, *supra* note 40, on the status of the Explanatory Statement in the interpretation of statutes). It should be noted, however, that the actual amendment was slightly different from that introduced at the First Reading stage (and see, now, *per* the Minister

tion[56] (principally in the fields of real property, trusts, succession, insurance and piracy) and have been inserted in the relevant local acts. It should also be noted that all archaic language has been done away with; in many cases, this has been easily achieved by adopting the latest (English) restatement of the original statutory provision, a good example of which may be found in the adoption of the relevant provisions of the *Law of Property Act, 1925*[57] instead of the older statutory provisions in, for example, the *Statute of Frauds, 1677*[58] or the *Accumulations Act, 1800.*[59] A detailed examination of these various amendments[60] would necessarily entail discussion of points of substantive law and is thus outside the purview of the present article and is best left to experts in their respective fields—although it should be noted that, by their very nature, these amendments are of no less importance than the English enactments listed in s. 4. The detailed comments below will pertain to the probable sources of these provisions and the general problems (if any) that have resulted.

We turn now to a consideration of the possible problems that either remain or are engendered by the *AELA* itself.

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for Law, Prof. S. Jayakumar in *Singapore Parliamentary Debates*, vol. 61 at cols. 616-17 (12 October 1993)). And *cf. Re Letter of Request from the Court of New South Wales for the Prosecution of Peter Bazos (Deposition Proceedings)*, [1989] 3 M.L.J. 408 especially at 413; affirmed [1992] 2 S.L.R. 280.

56 *Cf.* the New South Wales *Imperial Acts Application Act 1969* (No. 30 of 1969), s. 5 read with Part III and the First Schedule. See, also, generally, the *Report of the Law Reform Commission on the Application of Imperial Acts* (L.R.C. 4 November 1967) [hereinafter *New South Wales Report*]. Reference may also be made to the Australian Capital Territory's *Imperial Acts (Substituted Provisions) Act 1986* (No. 19 of 1986); *cf.*, also, the Australian Capital Territory's *Imperial Acts Application Ordinance 1986* (No. 93 of 1986) and see, generally, *Imperial Acts in force in the Australian Capital Territory—Report by the Law Reform Commission of the Australian Capital Territory together with a Supplementary Report* (Parliamentary Paper No. 63, 1973) [hereinafter *Australian Capital Territory Report*].

57 15 & 16 Geo. V, c. 20. And *cf.*, generally, *per* the Minister for Law, Prof. S. Jayakumar in *Singapore Parliamentary Debates*, vol. 61 at cols. 610 and 612 (12 October 1993).

58 29 Car. II, c. 3.

59 39 & 40 Geo. III, c. 98 (better known as *"Lord Thellusson's Act"*). Another good illustration is the adoption of s. 138 of the *County Courts Act 1984* (c. 28) instead of the more archaic language to be found in the *Landlord and Tenant Act, 1730* (4 & 5 Geo. II, c. 28), although the legal effect is, in substance, the same.

60 In particular, whether the modern language used might have substantive effects; there are, naturally, fewer problems if the local provision is based on an English provision that is itself framed in modern language. Though *cf.* Sir Leo Cussen in his statement to the Victorian Statute Law Revision Committee in the *The Imperial Acts Application Act, 1922 together with an Explanatory Paper on the Bill, the Report from the Joint Select Committee of the Legislative Council and the Legislative Assembly, and a General Index of Subject-Matters in the Act and the Explanatory Paper* (1923) [hereinafter *Victorian Report*] at 102: "[I]f you report in a present-day Act the language of an old Act it may have a different meaning to what it had then"; though *cf.*, in turn, His Honour's views on the use of modern language where there was no obstacle to consolidation: *ibid.* at 104.

IV. INTERPRETIVE AND OTHER PROBLEMS

A. What were the Probable Sources of the *AELA*?

The sources of the *AELA* are none too clear. There is no indication in the Explanatory Statement of the Bill; neither is there a Comparative Table which is sometimes attached to the Bill itself. From a practical perspective, however, the actual sources of the *AELA* are immaterial. Indeed—and as we have seen—the whole purpose of the *AELA* was to eliminate the uncertainty of what *is* the English law applicable in Singapore at any given point in time. However, it should be noted that practical efficiency is often at odds with theoretical rationality—and the *AELA* is, it is submitted, a good illustration of this tension. The point pertaining to theoretical rationality centres on the rationale underpinning the provisions of the *AELA* which, in turn, entails an analysis of the sources of the *AELA* itself. It will be seen that there are several possible criteria upon which the *AELA* was based, but none which can unambiguously serve, *per se*, as a basis—and this is so even if we take into account the division between general reception on the one hand and specific reception on the other.

1. PRIOR PRECEDENTS

One general criterion which was probably utilized is the presence of prior precedents.[61] Evidence of the use of such a criterion may be found across the board. Insofar as Imperial Statutes, for example, were concerned, we find that there were numerous cases where the *Maritime Conventions Act, 1911* was at least referred to.[62] And the *Territorial Waters Jurisdiction Act, 1878* appears to have been referred to,

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61 "Past judicial decisions have authoritatively held that certain pre-1826 English statutes, for example, the *Statute of Frauds, 1677*, have been received in Singapore. However, the problem is that it is not possible to say with certainty what other pre-1826 English statutes which have not been considered by our courts remain receivable.": *per* the Minister for Law, Prof. S. Jayakumar in *Singapore Parliamentary Debates*, vol. 61 at col. 609 (12 October 1993). See also, the *Victorian Report*, *supra* note 60 at 75. This is not, of course, to state that all English statutes that were declared to be law by local precedents were included in the *AELA*: see *e.g.*, with regard to the *Lord's Day Act*, 29 Car. II, c. 7, *Coomarapah Chetty* v. *Kang Oon Lock*, [1872] 1 Ky. 314 which was not included probably because of the multi-religious nature of modern Singapore and this, in turn, brings into play the more substantive criteria referred to below; *cf.* also, Braddell, *The Law of the Straits Settlements*, 1st ed., (1915), Appendix V (which lists "Decisions as to the Applicability of English Statutes").

62 1 & 2 Geo. V, c. 57; see *supra* note 49. And see *e.g.*, *Ch'ng Kim Huat* v. *Hamburg-Amerika-Nische Packetfahrt-Aktien Gesselschafi*, [1936] M.L.J. 214; *The "Atlantic Faith," S.C. Giotis* v. *The "Atlantic Faith" (Owners)*, [1978] 2 M.L.J. 187; and especially *Tan Ah Yeo* v. *Seow Teck Ming*, [1989] 2 M.L.J. 3; reversed (but not on this point relating to the applicability of the *Act*) in [1991] 2 M.L.J. 489. It should also be noted that the *Act* is also referred to in s. 4(1) of the (local) *Contributory Negligence and Personal Injuries Act* (Cap. 54, 1989 Rev. Ed.). See also Chong, "The Maritime Conventions Act 1911 and Extension of the Limitation Period" [1991] 3 M.L.J. i at i-ii and xi.

at least in argument.[63] There does not, however, appear to be any reported precedent where the remaining Imperial Act, the *Straits Settlements and Johore Territorial Waters (Agreement) Act, 1928*[64] was referred to, although it was included in the 1985 Revised Edition of the *Statutes of the Republic of Singapore*.[65]

Insofar as *commercial* statutes are concerned, of the list of thirteen, several have been at least referred to in local precedents: these include the *Mercantile Law Amendment Act, 1856*;[66] the *Factors Act, 1889*;[67] the *Partnership Act, 1890*;[68] the *Marine Insurance Act, 1906*;[69] the *Third*

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63 41 & 42 Vict., c. 73; see *supra* note 49. See also, *The Queen* v. *Low Chok and Others*, [1893] 1 S.S.L.R. 145 (a Malaccan case, Malacca, Singapore and Penang constituting the then Straits Settlements).

64 18 & 19 Geo. V, c. 23; see *supra* note 49.

65 As was the *Territorial Waters Jurisdiction Act, 1878*. Both the aforementioned acts still constitute the basis for Singapore's territorial waters boundaries. However, it is clear that not all the Imperial Acts in force were included in that edition: see the preface to the 1985 Revised Edition of the *Statutes of the Republic of Singapore*.

66 19 & 20 Vict., c. 97. And see *e.g.*, *Chinayah* v. *John Williams*, [1891] S.L.R. (N.S.) 26 (and see Bartholomew, *supra* note 49 at 91) and *The First National Bank of Chicago* v. *Tan Lai Wah*, [1981] 2 M.L.J. 100 (affirmed [1984] 1 M.L.J. 150 and reversing [1981] 1 M.L.J. 183). *Cf.*, also, ss. 14 and 15 of the Hong Kong *Law Amendment and Reform (Consolidation) Ordinance* (Cap. 23).

67 52 & 53 Vict., c. 45. And see *e.g.*, *Rahamin Penhas & Abraham Penhas trading as Rahamin Penhas* v. *Kishnan Chand & Sons and the firm of Kanshiram Parmanand*, [1933] M.L.J. 126 (a Straits Settlements case originating from Penang); *R.* v. *Talib bin Saiman*, [1935] M.L.J. 275, [1935] S.S.L.R. 225; *R.* v. *Tan Kee Leng*, [1936] M.L.J. 51, [1935] S.S.L.R. 472; *R.* v. *Yoon Choon Pawnshop*, [1939] M.L.J. 125, [1939] S.S.L.R. 242; *Cheah Swee Hock* v. *Public Prosecutor*, [1961] M.L.J. 183 (a case from Penang after the disbandment of the Straits Settlements); *Sin Gee Seng* v. *Wai Wah Trading Co.*, [1962] M.L.J. 189; and *Commercial & Savings Bank of Somalia* v. *Joo Seng Company*, [1989] 2 M.L.J. 200. See further, Bartholomew, *supra* note 49 at 107.

68 53 & 54 Vict., c. 39. And see *e.g.*, *Katz* v. *Yap Boon Seng*, [1902-3] 7 S.S.L.R. 18; *Wee Wat Neo* v. *Chop Khoo Aik Seng & Co.*, [1910] 11 S.S.L.R. 50; *Murray* v. *David*, [1930] S.S.L.R. 229 especially at 231 (where Murison C.J. observed that "[b]y Ordinance No. 111 (Civil Law) Section 5(1) the English law of partnership applies to the Colony"); *In re Ordinance No: 101 (Courts) and In re a Solicitor*, [1933] M.L.J. 147, [1933] S.S.L.R. 117 (more a disciplinary case); *Chop Cheong Tuck* v. *Chop Tack Loong, Lum Ting Choy, Lee Hon Cheong*, [1934] M.L.J. 176, [1934] S.S.L.R. 287; *Re Siew Inn Steamship Company, Ex Parte Ho Hong Bank, Limited, Tan Boon Cheo* v. *Ho Hong Bank, Limited*, [1934] M.L.J. 180, [1934] S.S.L.R. 199; *Re W. S. Bee and Company, Ex Parte Official Assignee*, [1938] M.L.J. 7, [1937] S.S.L.R. 289; *Chew Kong Chin* v. *Estate & Trust Agencies (1927) Ltd.*, [1938] M.L.J. 201, [1938] S.S.L.R. 43 (a Straits Settlements decision originating from Malacca); *In re K. Mohamed Ibrahim & Company, Ex Parte Ramchand*, [1940] M.L.J. 90, [1940] S.S.L.R. 124; *Chia Foon Sian* v. *Lam Chew Fah*, [1955] M.L.J. 203; *Wong Peng Yuen* v. *Senanayake*, [1962] M.L.J. 204; *Ratna Ammal* v. *Tan Chow Soo*, [1964] M.L.J. 399 (originating from Penang); *Philips Singapore Pte Ltd.* v. *Han Jong Kwang*, [1989] 2 M.L.J. 323; *Arif* v. *Yeo*, [1990] 1 M.L.J. 218 especially at 221 (where Coomaraswamy J. observed that "[b]y s. 5(1) of the *Civil Law Act*... the law applicable in Singapore with respect to partnership is English law"); *Mayban Finance (Singapore) Ltd* v. *Yap Thiam Sen*, [1991] 1 M.L.J. 204 especially at 207; *Chua Ka Seng* v. *Boonchai Sompolpong*, [1993] 1 S.L.R. 482; and *Poon Sok Tian* v. *Lee Investment (S) Private Limited* (22 December 1992) Suit No. 2043 of 1990 (Singapore High Court) (where Hwang J.C. observed (at 19) that the *Act* was "mainly a restatement of common law doctrines"). See further, Bartholomew, *supra* note 49 at 107.

Parties (Rights against Insurers) Act, 1930;[70] the *Misrepresentation Act 1967*;[71] the *Unfair Contract Terms Act 1977*;[72] the *Sale of Goods Act 1979*;[73]

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69 6 Edw. VII, c. 41. And see *e.g.*, *Aik Teong Trading Co.* v. *National Union Fire Insurance Co.*, [1962] M.L.J. 299 (originating from Penang); *Keck Seng & Co. Ltd.* v. *Royal Exchange Assurance*, [1964] M.L.J. 256 especially at 259 (where Ambrose J. observed that "the defendants were entitled to invoke the provisions of section 55(2)(c) of the *Marine Insurance Act, 1906*, of England, by virtue of the provisions of section 5(1) of the *Civil Law Ordinance*"); *The Freighter "Kien Kung."* [1965] 2 M.L.J. 60; *Boon & Cheah Steel Pipes Sdn Bhd* v. *Asia Insurance Co. Ltd.*, [1973] 1 M.L.J. 101 (a case originating from Malaysia, but where it was common ground between the parties that English law applied); *Wong Wing Fai Co. SA* v. *A. D. Shead*, [1980] 2 M.L.J. 1 especially at 2; *Malayan Motor and General Underwriters (Pte) Ltd.* v. *Abdul Karim*, [1982] 1 M.L.J. 51 especially at 52; *Malayan Motor & General Underwriter (Pte) Ltd.* v. *M. H. Almojil*, [1982] 2 M.L.J. 2; *The "Melanie", United Oriental Assurance Sdn Bhd Kuantan* v. *W. M. Mazzarol*, [1984] 1 M.L.J. 260 especially at 264 (a Malaysian decision which premised the applicability of the *Act* on the basis of the local equivalent of s. 5 of the *Singapore Civil Law Act*); *Leong Brothers Industries Sdn Bhd* v. *Jerneh Insurance Corp. Sdn Bhd*, [1991] 1 M.L.J. 102 especially at 103 (a Penang decision which referred also to the local equivalent of s. 5 of the Singapore *Civil Law Act*); *Ngo Chew Hong Edible Oil Pte Ltd.* v. *Geoffrey Kenneth Knight*, [1988] 3 M.L.J. 145; and *PT Karimun Granite* v. *Insurance Company of North America*, [1993] 1 S.L.R. 650. See also, Bartholomew, *supra* note 49 at 107. But *cf.* in jurisdictions where there is a "cut-off" date which is "exceeded" by the 1906 *Act*, in which case only *English Marine Insurance Acts* passed prior to the "cut-off" date would be adopted or adapted, as the case may be: see *e.g.*, ss. 24-28 of the New South Wales *Imperial Acts Application Act 1969* (No. 30 of 1969) and ss. 9-11 of the Queensland *Imperial Acts Application Act 1984* (No. 70 of 1984) where adaptation has, in fact, occurred.

70 20 & 21 Geo. V, c. 25. And see *e.g.*, *King Lee Tee* v. *Norwich Union Fire Insurance Society, Limited*, [1933] M.L.J. 187 (held to be applicable by way of s. 5 of the *Civil Law Act*, although it should be noted that the facts related to motor insurance, a situation which has hitherto been covered by the (local) *Motor Vehicles (Third Party) Risks and Compensation Act* (Cap. 189, 1985 Rev. Ed.); *cf.* also, the Malaysian decisions of *Sinnadorai* v. *New Zealand Insurance Co. Ltd.*, [1968] 2 M.L.J. 70 at 71 and *National Insurance Co. Ltd.* v. *Abdul Hafidz bin Haji Abdul Rahman*, [1983] 2 M.L.J. 105 at 107).

71 Chapter 7—although it should be noted that there has been no clear-cut statement to the effect that the *Act* is part of Singapore law. However, it has been popularly assumed that the Act is law in Singapore; and *cf. Societe Generale* v. *City Holdings (Pte) Ltd.*, [1991] 2 M.L.J. 212 at 219; *Sheriffa Taibah bte Abdul Rahman* v. *Lim Kim Som*, [1992] 2 S.L.R. 516 at 553; rev'd, [1994] 1 S.L.R. 393 (but not on this point); and *Yeo Wee Tee, Gn Tze Yan* v. *Peter Cheong Seng Peow* (16 December 1991) Originating Summons No. 1234 of 1986 (Singapore High Court). See also, Phang, *supra* note 27 at 276-77; but *cf.* Bartholomew, *supra* note 49 at 107.

72 Chapter 50. And see the District Court cases of *Sim Peng Soon* v. *Victor & Morris (Pte) Ltd.* (Unreported; D.C.A. No. 15 of 1988) and *Chew Kim Heng, Heng Juat Him* v. *Far East Finance Organization Ltd.* (Unreported; D.C.A. No. 10 of 1990) which are not very helpful inasmuch as it appears that all the counsel concerned agreed that the *Act* was received in Singapore. See also the more recent Singapore High Court decision of *Consmat Singapore (Pte) Ltd.* v. *Bank of America National Trust & Savings Association*, [1992] 2 S.L.R. 828 where, however, Thean J. held that s. 24 of the (local) *Bills of Exchange Act* (Cap. 23, 1985 Rev. Ed.) precluded the application of the *Unfair Contract Terms Act* but nevertheless, and interestingly enough, proceeded to consider the provisions of the latter *Act* on the assumption that the *Act* was actually applicable, thus suggesting (by implication at least) that the *Act* is applicable in the Singapore context. There is now, of course, no problem after the *AELA* which expressly lists the *Act* as applicable. *Cf.* also, *Brown Noel Trading Pte Ltd.* v. *Singapore Press Holdings Ltd.*, [1993] 3 S.L.R. 787 at 791-92. See also, Phang, *supra* note 27 at 277-81; but *cf.* Bartholomew, *supra* note 49 at 108.

73 Of 1979 (c. 54), which is substantially similar to its 1893 predecessor which earlier cases, of course, referred to. And see *e.g.*, *Behr & Co.* v. *Lee Swee Tin*, [1895-6] 3 S.S.L.R. 48; *Saiboo Tamby*

the *Supply of Goods and Services Act 1982*;[74] and the *Minors' Contracts Act*.[75] There appear to be no local precedents referring to the *Policies of Assurance Act, 1867*;[76] the *Corporate Bodies' Contracts Act, 1960*[77] and the *Carriage of Goods by Sea Act 1992*.[78] However, it should be noted that, of the remaining three acts just mentioned, there have, in fact, been local cases referring to one of their predecessors.[79] Even the two further

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v. *Chop Kim Chin Bee*, [1898-9] 5 S.S.L.R. 54; *Leach* v. *Sin Moh & Co.*, [1902-3] 7 S.S.L.R. 38; *Nagurdas Purshotumdas & Co.* v. *Mitsui Bussan Kaisha, Ltd.*, [1911] 12 S.S.L.R. 67; *Lohmann & Company, Limited* v. *Mong Huat & Company*, [1931] S.S.L.R. 129; *AHW Miles* v. *Sandilands Buttery & Co.*, [1932] S.S.L.R. 49; *Rex* v. *Tan Kee Leng*, [1936] M.L.J. 51, [1935] S.S.L.R. 472; *Chop Ngoh Seng* v. *Esmail and Ahmad Bros.*, [1948-9] M.L.J. Supp. 93, [1948] S.L.R. 117; *Cheah Swee Hock* v. *Public Prosecutor*, [1961] M.L.J. 183 (a case from Penang after the disbandment of the Straits Settlements); *Hock Hin & Co.* v. *Allwie & Co. Ltd.*, [1961] M.L.J. 232; *Sin Gee Seng* v. *Wai Wah Trading Co.*, [1962] M.L.J. 189; *Yap Chin Hock* v. *Cheng Wang Loong*, [1964] M.L.J. 276; *Malayan Miners Co. (M) Ltd.* v. *Lian Hock & Co.*, [1966] 2 M.L.J. 273; *Seng Hin* v. *Arathoon Sons Ltd.*, [1968] 2 M.L.J. 123; *Himatsing & Co.* v. *PR Joitaram*, [1970] 2 M.L.J. 246; *Bulsing & Co.* v. *Joon Seng & Co.*, [1972] 2 M.L.J. 43; *Eastern Supply Co.* v. *Kerr*, [1974] 1 M.L.J. 10; *Harrisons & Crosfield (NZ) Ltd.* v. *Lian Aik Hang (Sued as a Firm)*, [1987] 2 M.L.J. 286; *Commercial & Savings Bank of Somalia* v. *Joo Seng Company*, [1989] 2 M.L.J. 200; *JH Rayner (Mincing Lane) Ltd.* v. *Teck Hock & Co. (Pte) Ltd.*, [1990] 2 M.L.J. 142 especially at 144; *Yeo Hiap Seng* v. *Australian Food Corp Pte Ltd.*, [1991] 3 M.L.J. 144; *Hua Khian Ceramics Tiles Supplies Pte Ltd.* v. *Torie Construction Pte Ltd.*, [1992] 1 S.L.R. 884; *Lee Ah Yong t/a Consign Agency* v. *Kansai Paint (Singapore) Pte Ltd.* (24 January 1992) Suit No. 1891 of 1987 (Singapore High Court); *Bintulu Forest Industries Sdn Bhd* v. *Scanply International Wood Products Ltd.* (22 June 1992) Suit No. 5593 of 1986 (Singapore High Court); *Tan Chin Aik* v. *Wong Ting Fatt* (30 September 1992) Originating Summons No. 508 of 1992 (Singapore High Court); *Koh Teck Hee (t/a Mui Teck Hong Garments & Trading Co.)* v. *Leow Swee Kim (t/a Meyoung Trading)*, [1992] 1 S.L.R. 905; *Additive Circuits (S) Pte Ltd.* v. *Wearnes Automation Pte Ltd.*, [1992] 2 S.L.R. 23; and *Lim Kim Cheong* v. *Lee Johnson*, [1993] 1 S.L.R. 313. See also, *Wee Soon Chew* v. *ME Nathan*, [1897] 4 S.S.L.R. 8; *Muthusamy* v. *Subramaniam*, [1965] 2 M.L.J. 273; and *Koninklijke Bunge NV* v. *Sinitrada Co. Ltd.*, [1973] 1 M.L.J. 194 (all these cases referred to s. 4 of the *Sale of Goods Act, 1893*, which replaced s. 17 of the *Statute of Frauds, 1677* and which was itself subsequently repealed, although there was a local equivalent re-enacted in an amendment to the *Civil Law Act*, which was itself repealed in 1979 by the *Civil Law (Amendment No. 2) Act 1979* (No. 24 of 1979); see, also, Bartholomew, *supra* note 49 at 80). And see Phang, *supra* note 27 at 274-75 and Bartholomew, *supra* note 49 at 107.

74 Chapter 29. And see the unreported decision of Selvam J.C. (as he then was) in *Fast Marine Supply Pte Ltd.* v. *The Owners of the Ship or Vessel "Mosgulf"* (9 December 1992) Admiralty in Rem no. 586 of 1990, where the learned judge observed that it "was clear that the English *Supply of Goods and Services Act 1982* should be applied to this case under s. 5 of the *Civil Law Act* (Cap. 43)"; rev'd, [1994] 1 S.L.R. 354 (but not on this point).

75 Chapter 13. See also, *Rai Bahadur Singh* v. *Bank of India*, [1993] 1 S.L.R. 634 at 647 where only passing reference was made to the *Act* since it was not potentially applicable as the cause of action had arisen before the *Act* had come into force. The predecessor *Act* was the *Infants Relief Act, 1874* (U.K.), 37 & 38 Vict., c. 62; and for a local case with regard to this *Act*, see *Ngo Bee Chan* v. *Chia Teck Kim*, [1912] 2 M.C. 25. And see generally, Phang, *supra* note 27 at 282-85.

76 30 & 31 Vict., c. 144.

77 8 & 9 Eliz. II, c. 46.

78 Chapter 50.

79 This is the *Bills of Lading Act, 1855*, 18 & 19 Vict., c. 111 which was the predecessor of the *Carriage of Goods by Sea Act 1992*. For local cases see *e.g.*, *Bank of China* v. *Brusgaard Kiosterud & Co.*, [1956] M.L.J. 124, [1956] S.L.R. 5; *Owners and Other Persons interested in the MV "The Jag*

remaining acts, the *Policies of Assurance Act, 1867* and the *Corporate Bodies' Contracts Act, 1960*, do not raise any real problems despite the absence of local authority: the former has been considered to apply in Singapore[80] whilst the purpose of the latter is not inappropriate to the commercial ethos of Singapore.[81] It should be observed, at this point, that these English commercial statutes are obviously to be correlated, insofar as substantive reasons go, with the principles governing the specific reception of English commercial law under s. 5 of the *Civil Law Act*,[82] and, indeed, in some of the local cases mentioned in this paragraph, s. 5 is expressly mentioned.

Insofar as the amendments based on English statutory provisions are concerned,[83] an examination of the actual English acts themselves will reveal that these, too, have been referred to in local precedents. For instance, the new s. 6A of the *Civil Law Act*[84] is based on s. 4 of the English *Statute of Frauds, 1677*,[85] which was replaced by s. 40 of the *Law of Property Act, 1925*.[86] Likewise, the new s. 6B of the *Civil Law Act* is based on ss. 7, 8 and 9 of the *Statute of Frauds, 1677*, which were replaced by s. 53 of the *Law of Property Act, 1925*.[87] And there are numerous local cases which have either referred to or applied the *Statute of Frauds* in various contexts.[88] Other examples may also be cited. These include, first,

Shakti" v. *Chabbra Corporation Pte Ltd., "The Jag Shakti,"* [1986] 1 M.L.J. 197, [1986] A.C. 337; affirming (on different grounds) [1983] 1 M.L.J. 58; and *Pacific Electric Wire & Cable Co. Ltd.* v. *Neptune Orient Lines Limited*, [1993] 3 S.L.R. 60, noted in Yeo, "Foreign Law in Bills of Lading" [1993] S.J.L.S. 245. See also, Bartholomew, *supra* note 49 at 107.

80 See Poh Chu Chai, *The Law of Insurance*, 3d ed. (1993) at 525, note 82 and at 821, note 29.

81 See *e.g.*, Furmston, ed., *Cheshire, Fifoot and Furmston's Law of Contract*, 12th ed., (1991) at 226: [S]ince the sixteenth century the common law has been signally free of any rules requiring contracts to be made or evidenced in a particular way. The only common law exception was that contracts made by corporations had to be made under seal but that rule was first eroded by exceptions and finally abolished by the *Corporate Bodies' Contracts Act, 1960*.

82 For a general account of the background, see Part II of this article above. And see *per* the Minister for Law, in *Singapore Parliamentary Debates*, vol. 61 at cols. 610-11 (12 October 1993).

83 See s. 7 read with the Second Schedule.

84 Cap. 43, 1988 Rev. Ed.

85 29 Car. II, c. 3.

86 15 & 16 Geo. V, c. 20. Reference may also be made to s. 3 of the Hong Kong *Conveyancing and Property Ordinance 1984* (No. 62 of 1984; see, now, Cap. 219). It should, however, be noted that the *English* law relating, *inter alia*, to contracts for the sale of land or any interest in land is now quite different; most importantly, the contract itself must be in writing: see the *Law of Property (Miscellaneous Provisions) Act 1989* (c. 34).

87 Reference might also be made to the s. 5 of the *Hong Kong Conveyancing and Property Ordinance 1984* (No. 62 of 1984; see, now, Cap. 219). *Cf.*, also, the Australian Capital Territory's *Imperial Acts (Substituted Provisions) Act 1986* (No. 19 of 1986), s. 3(1) read with the Schedule 1 and Schedule 2, Part 11.

88 See *e.g.* (and leaving aside East Malaysian cases), *Jemadar Sabtu* v. *Virtashellum*, [1871] Leic. 431; *Lorrain Gillespie & Co.* v. *Khoo Heng Team*, [1871] Leic 280; *Revely & Co.* v. *Kam Kong Gay*, [1840] 1 Ky. 32 especially at 34 (where Norris R. observed that "if ever there were a law, an

the new Part XIIA to the local *Conveyancing and Law of Property Act*,[89] which was based on the *Accumulations Act, 1800*,[90] which was, in turn, replaced by s. 164 of the *Law of Property Act, 1925* that, together with the additions effected by s. 13(1) of the *Perpetuities and Accumulations Act 1964*,[91] renders the basic principle in the 1800 *Act* in more modern and accessible language.[92] Once again, the 1800 *Act* has been referred to in

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ignorance or disregard of which among mercantile men were peculiarly undeserving of toleration, it surely is the justly commended Statute in question; because there is no law, perhaps, the wise provisions of which are more consonant to the dictates of ordinary prudence, regularity and fair dealing, or better calculated to insure the certainty and hence the security, and uphold the honour and respectability of mercantile contracts; particularly in the transactions of Europeans with natives, or of different classes of natives with one another"; this was not a contract for the sale of land, but concerned s. 17, as to which see *supra* note 73); *Sherifa Fatima* v. *Fleury*, [1893] 1 S.S.L.R. 49; *The Straits Steamship Company, Limited* v. *John Mitchell Thow*, [1893] 1 S.S.L.R. 93; *Tan Cheng* v. *Murray*, [1894] 2 S.S.L.R. 35; *Saiboo Tamby* v. *Chop Kim Chin Bee* [1898-9] 5 S.S.L.R. 54; *Chop Joo Seng Chan* v. *Chop Soon Mui*, [1905] 9 S.S.L.R. 39; *Khoo Keat Lock* v. *Haji Yusop*, [1929] S.S.L.R. 210; *In the Estate of ENA Mohamed Tamby, deceased*, [1931] S.S.L.R. 3; *AR Holden & Co., Ltd.* v. *Soh Yiew Jin, Ong Tiang Soon*, [1933] M.L.J. 64; *NS Narainan Pillay* v. *The Netherlandsche Handel Maatschappij*, [1934] M.L.J. 227; *Song Kim Puah* v. *Lim Hoe Chye*, [1954] M.L.J. 197, [1953] S.L.R. 32; *Khalik* v. *Thai Craft Ltd.*, [1966] 2 M.L.J. 112; *Teo Chwee Geok* v. *Ng Hui Lip & Co.*, [1967] 1 M.L.J. 245; *United Overseas Bank Ltd.* v. *Sin Bian Sea Tpt.*, [1967] 2 M.L.J. 274; *Sigma Cable Co. Ltd.* v. *Nam Huat Electric & Sanitary Co.*, [1972] 1 M.L.J. 7; *Alice Wee* v. *Yeo Gek Lang*, [1978] 1 M.L.J. 196; rev'd [1979] 1 M.L.J. 213 (but not on this point); *Mary-Ann Arrichiello* v. *Tanglin Studio Pte Ltd.*, [1981] 2 M.L.J. 60; *Kok Ek Chooi* v. *Cheah Soon Neoh*, [1982] 1 M.L.J. 219 (a case originating from Penang); *Kau Nia Enterprise (Pte) Ltd.* v. *Teck Wah Corporation (Pte) Ltd.*, [1982] 1 M.L.J. 10; *Leong Sze Hian* v. *Teo Ai Choo*, [1984] 2 M.L.J. 192; affirmed [1986] 2 M.L.J. 331; *Eng Joo Lee Private Limited* v. *Kian Chiang Granite Quarry Company (Pte) Ltd.*, [1986] 2 M.L.J. 256; *Lee Choon Peng* v. *Lamco Building Pte Ltd.*, [1991] 3 M.L.J. 363 (though *quaere* the reference to s. 5 of the *Civil Law Act* at 365); *Sim Kim Huat* v. *Phua Vee Lin, Justina*, [1992] 1 C.L.J. 323; *Klerk-Elias Liza* v. *KT Chan Clinic Pte Ltd.*, [1993] 2 S.L.R. 417; *Ku Yu Sang* v. *Tay Joo Sing*, [1993] 3 S.L.R. 938; *Kok Fook Wong* v. *Chan Peng Mun* (3 February 1993) Civil Suit No. 7757 of 1984 (Singapore High Court) where Khoo J. observed (at 34) that "[i]t is common ground that the Statute applies to Singapore by virtue of the *Second Charter of 1826*. The defendant relies on s 7 and s 9. In England, these provisions have been repealed and replaced by provisions of the *Law of Property Act, 1925*, but in Singapore they remain in their original form."); and *Christina Lee (m.w.)* v. *Eunice Lee (f), Po Guan Hock (sued as Executors of the Will of Lee Teck Soon* (22 February 1992) Civil Suit No. 6248 of 1983 (Singapore High Court), where Rubin J.C. observed (at 22) that "[t]he relevant portion of s 4 of the *Statute of Frauds, 1677* was repealed by the *Law of Property Act, 1925* (s. 207 and Schedule VII) and reproduced with only slight linguistic differences [in s. 40(1)]...."; and at the Court of Appeal stage Goh J., who delivered the judgment of the Court, observed (in [1993] 3 S.L.R. 8 at 16) that "[s]ection 4 of the *Statute of Frauds* is *in pari materia* with s. 40(1) of the *Law of Property Act, 1925*...." But *cf.* the *New South Wales Report*, *supra* note 56 at 95-99 and the Australian Capital Territory's *Acts (Substituted Provisions) Ordinance 1986*, s. 3(1) read with Schedule 1 and Schedule 2, Part II (No. 19 of 1986; see also, the *Australian Capital Territory Report*, *supra* note 56 at 35). And see, now, *Singapore Parliamentary Debates*, vol. 61 at col. 609 (12 October 1993) *per* the Minister for Law, Prof. S. Jayakumar.

89 Cap. 61, 1985 Rev. Ed.

90 39 & 40 Geo. III, c. 98.

91 Chapter 55.

92 Reference might also be made to the Hong Kong *Perpetuities and Accumulations Ordinance 1970* (No. 26 of 1970; see, now, Cap. 257), especially s. 17. *Cf.* the Table of Imperial Acts and Documents Applicable to Tasmania in *Tasmanian Statutes 1826-1959*, vol. 6 at 844.

not a few local decisions.[93] So, also, the new ss. 73B[94] and 73C to the local *Conveyancing and Law of Property Act* are based on two rather old statutes[95] which, whilst retaining the essential substance, have been rendered into modern form in ss. 172 and 173 of the (English) *Law of Property Act, 1925*, respectively. And it is the more modern (1925) form that the local provisions have adopted, although the older statutes have, in fact, been referred to in local cases.[96] Another example is the new s. 61B to the Singapore *Insurance Act*,[97] which reproduces (in more accessible form) s. 86 of the *Fire Prevention (Metropolis) Act, 1774*.[98] Even prior to the introduction of the former provision, the 1774 *Act* itself

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93 See *e.g.*, *In the Matter of the Estate of Tan Kim Seng, deceased, Tan Jiak Kim* v. *Tan Jiak Whye*, [1897] 4 S.S.L.R. 141; *Syed Omar bin Shaikh Alkaff* v. *Syed Abdulrahman bin Shaikh Alkaff*, [1946] M.L.J. 63; *In Re H. Somapah, deceased*, [1946] M.L.J. 25; and *Hongkong Bank Trustee (Singapore) Ltd.* v. *Farrer Tan*, [1988] 1 M.L.J. 485 especially at 489 (where the firstmentioned case in this note was cited). *Cf.* the *Australian Capital Territory Report*, *supra* note 56 at 76.

94 And see s. 6(3) which repeals the (local) *Voluntary Conveyances Act* (Cap. 346, 1985 Rev Ed.) as well as the Explanatory Statement to the Bill: "The *Voluntary Conveyances Act* is being repealed as a consequence of the new section 73B to be inserted in the *Conveyancing and Law of Property Act* by the Second Schedule." Hong Kong adopted a similar approach: see ss. 60 and 61 of the *Conveyancing and Property Ordinance 1984* (No. 62 of 1984; see, now, Cap. 219).

95 See, respectively, 13 Eliz., c. 5 ("An act against fraudulent, deeds, alienations, *etc.*"; of 1571 vintage) and 27 Eliz., c. 4 ("An act against covinous and fraudulent conveyances"; of 1585 vintage).

96 See *e.g.*, (for the statute 13 Eliz., c. 5) *Re Khor Bak Kee*, [1936] M.L.J. 6 especially at 8 (on appeal from Penang, a part of the then Straits Settlements, as was Singapore); *cf. Rex, on the Prosecution of Foong Kut* v. *Leong Kwing*, [1929] S.S.L.R. 162. Indeed, this particular statute has been perceived (in accordance with established English precedents) as being *interchangeable* with the common law: see the first case cited in this note as well as *Bagher Singh* v. *Chanan Singh*, [1961] M.L.J. 328 at 329 and *PJTV Denson (M) Sdn Bhd* v. *Roxy (Malaysia) Sdn Bhd*, [1980] 2 M.L.J. 136 at 137 (both of which were not even cases emanating from Singapore!). And see *e.g.*, (for the statute 27 Eliz., c. 4) *Yeoh Siew Bee Neo and Lim Chee Boo (her husband)* v. *Lee Teng See, Lee Teng Thye, Lee Teng Seang, Lee Hai Thye and Lee Toon Huah*, [1894] 2 S.S.L.R. 77 (a Straits Settlements decision emanating from Penang); *CV Dyson* v. *Harriet Herft, Walter Vyner, George Herft*, [1911] 12 S.S.L.R. 29 (a Straits Settlements decision emanating from Malacca); and *Syed Abbas bin Hussein Aideed* v. *Charles Scott*, [1842] 1 Ky. 64 (a Straits Settlements decision emanating from Penang). *Cf.*, though Part II, Division 9 and Division 22 of the Victorian *Imperial Acts Application Act, 1922* (No. 3270) where the archaic wording in the original statutes has been transcribed; see, also, the *Victorian Report*, *supra* note 60 at 107 (per Sir Leo Cussen); but *cf.*, in turn, and generally, Part III of the same *Act* which appears to adopt an approach similar to that taken by s. 7 read with the Second Schedule of the 1993 *Act* (and see the *Victorian Report*, *ibid.* at 107 and 115), although the provisions were not, like the Singapore Act, "distributed" amongst the relevant *Victorian* legislation as such (and *cf.* the *Victorian Report*, *ibid.* at 121). It should be noted, however, that the 1922 *Act* no longer applies: see the 1980 *Act* (No. 9426); for the general background, see Kewley, *Report on the Imperial Acts Application Act 1922* (1975) [hereinafter *Kewley*]. *Cf.*, also, the Australian Capital Territory's *Imperial Acts (Substituted Provisions) Ordinance 1986* (No. 19 of 1986), s. 3(1) read with Schedule 1 and Schedule 2, Part 7 as well as the *Australian Capital Territory Report*, *supra* note 56 at 75-76.

97 Cap. 142, 1985 Rev. Ed.

98 14 Geo. III, c. 78. And see Bartholomew, *supra* note 49 at 68. *Cf.* also, the Hong Kong *Application of English Law Ordinance* (Cap. 88), s. 4 read with the Schedule, Item 38 as well as

had been referred to in not only Singaporean[99] but also in Malaysian case law.[100] It should, however, be noted that in this particular category at least, there are relatively more provisions based on English statutory provisions that have not apparently been considered in prior local cases.[101] This suggests yet another possible (broad) criterion (of "public policy") which will be briefly discussed below.

It should, at this juncture, however, be mentioned that there is at least one set of provisions introduced in the Second Schedule which is apparently traceable, in part only, to prior English statutes. These are the new ss. 130B and 130C (contained in a new Part VIA) added to the existing (local) *Penal Code*,[102] and relating to piracy. This particular area

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s. 50 of the Victorian *Imperial Acts Application Act, 1922* (No. 3270) (though *cf. supra* note 96 on the fate of the 1922 *Act*).

99 There is at least one case, *viz.*, *Chua Hong Hoon Co. Ltd.* v. *Gold Coin Ltd.*, [1979] 2 M.L.J. 218 where, however, the fact situation was held to have fallen outside the purview of the *Act*.

100 See *e.g.*, *Leong Bee & Co.* v. *Ling Nam Rubber Works*, [1970] 2 M.L.J. 45, affirming [1968] 1 M.L.J. 216 and *Sheikh Amin bin Salleh* v. *Chop Hup Seng*, [1974] 2 M.L.J. 125. Reference may also be made to the Sarawak case of *Toh Siew Cheng* v. *Lee Kim Chung*, [1960-3] S.C.R. 194 (decided prior to Sarawak becoming part of Malaysia itself).

101 To the best of this writer's knowledge, these include the *Statute of Marlborough, 1267*, 52 Hen. III, c. 23, dealing with voluntary waste and now to be found as the new ss. 4(2) (2A) and (2B) of the local *Civil Law Act* (Cap. 43, 1988 Rev. Ed.; *cf.*, also, the New Zealand Law Commission, *Imperial Legislation in Force in New Zealand—A report on the Imperial Laws Application Bill introduced in the Parliament of New Zealand on 21 October 1986* (Report No. 1, 1987) at 19 [hereinafter *New Zealand Report*]); s. 32 of the New South Wales *Imperial Laws Application Act 1969* (No. 30 of 1969; see also: *New South Wales Report, supra* note 56 at 48-49); s. 8 of the Queensland *Imperial Acts Application Act 1984* (No. 70 of 1984); and the Australian Capital Territory's *Imperial Acts (Substituted Provisions) Ordinance 1986*, s. 3(1) read with Schedule 1 and Schedule 2, Part 1 (No. 19 of 1986; see also the *Australian Capital Territory Report, supra* note 56 at 12)); the statute, 25 Edw. III, St. 5, c. 5 (now to be found as the new s. 16A of the *Civil Law Act*, and dealing with executors of executors; *cf.*, also, s. 19 of the Victorian *Imperial Acts Application Act, 1922* (No. 3270; though *cf.*, *supra* note 96, on the fate of the 1922 *Act*); s. 13(1) of the New South Wales *Imperial Acts Application Act 1969* (No. 30 of 1969; see, also, the *New South Wales Report, supra* note 56 at 39); and s. 34 of the Hong Kong *Probate and Administration Ordinance 1971* (No. 26 of 1971; see, now, Cap. 10) which is in substantially the same terms; and the Australian Capital Territory's *Imperial Acts (Substituted Provisions) Ordinance 1986*, s. 3(1) read with Schedule 1 and Schedule 2, Part 3 (No. 19 of 1986; see, also, the *Australian Capital Territory Report, supra* note 56 at 12)); s. 138 of the *County Courts Act 1984* (c. 28, and itself based on the *Landlord and Tenant Act, 1730*, 4 & 5 Geo. II, c. 28, now to be found, locally, as the new s. 18A of the *Conveyancing and Law of Property Act* (Cap. 61, 1985 Rev. Ed.)); s. 27 of the *Administration of Justice Act, 1705*, 4 & 5 Ann., c. 3 (now to be found as the new s. 73A of the *Conveyancing and Law of Property Act, supra*; but *cf.* the *New South Wales Report, supra* note 56 at 103 and Kewley, *supra* note 96 at 16-17); and the *Life Assurance Act, 1774*, 14 Geo. III, c. 48, now to be found as the new s. 61A of the *Insurance Act* (Cap. 142, 1985 Rev. Ed.), although it should be noted that this *Act* has always been treated as being applicable in the Singapore context: see *e.g.*, Poh, *supra* note 80 at 5-14, and Bartholomew, *supra* note 49 at 68; see, also, the Hong Kong *Application of English Law Ordinance* (Cap. 88), s. 4 read with the Schedule, Item 37; *cf.* also, ss. 22-23 of the New South Wales *Imperial Acts Application Act 1969* (No. 30 of 1969; see, also, the *New South Wales Report, supra* note 56 at 42-43) and the Table of Imperial Acts and Documents Applicable to Tasmania in *Tasmanian Statutes, 1826-1959*, vol. 6 at 844; see also, the *Australian Capital Territory Report, supra* note 56 at 19-20).

102 Cap. 224, 1985 Rev. Ed.

is, in fact, outside the scope of this writer's expertise, as are many others, the present article being intended to give only a broad general overview of the *AELA*. However, it is clear that more research is required, at least for tracing the historical antecedents of these particular provisions.[103] The existing evidence is none too clear; the marginal note to the new s. 130B, for example, refers to the British *Admiralty Offences (Colonial) Act, 1849*,[104] although a close perusal of the section does not appear to evince any similarity, the British *Act* being, in fact, more concerned with jurisdiction[105] rather than with the ostensibly substantive law which appears to characterize s. 130B.[106] Insofar as the new s. 130C is concerned, however, there is evidence that part of it[107] is based on s. 1 of the *Piracy Act, 1721*.[108] It should be mentioned that s. 130B appears to be dealing with piracy in the context of international law[109] whilst s. 130C appears to pertain to piracy in a domestic context.[110]

It might be pertinent to observe that the category of amendments discussed in the preceding paragraph may be correlated with the reception of pre-1826 English statutes under the general reception of English

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103 Which are, perhaps rather curiously, very similar to the provisions to be found in ss. 74 and 75 of the Canadian *Criminal Code*, R.S.C. 1985, c. C-46.

104 12 & 13 Vict., c. 96; and see the reference to this *Act* in s. 374(2) of the local *Merchant Shipping Act* (and see *Mohamed Mokhtar bin Sarjani* v. *Public Prosecutor*, [1976] 2 M.L.J. 153 where the provision is referred to), which subsection was, however, deleted by the *Statute Law Revision Act 1986* (No. 2 of 1986) (the present amended provision is s. 377 of the *Merchant Shipping Act* (Cap. 179, 1985 Rev. Ed.), without of course, s-s. (2)). However, the relevant Parliamentary Debates appear to suggest that no substantive change was intended (see *Singapore Parliamentary Debates*, vol. 46 at cols. 697-98 (10 January 1986)). And see the Explanatory Statement to the Bill, which stated that the insertion of the provisions was "to deal with piracy which at present is governed by the U.K. *Admiralty Offences (Colonial) Act 1849* together with the *Courts (Colonial) Jurisdiction Act 1874*. Both these U.K. Acts will also cease to apply in Singapore."

105 Indeed, in the Singapore context, s. 15(1)(d) of the *Supreme Court of Judicature Act* (Cap. 322, 1985 Rev. Ed.; Reprint 1993, Date of Reprint: 10 August 1993) states that "[t]he High Court shall have jurisdiction to try all offences committed—. . . (d) by any person on the high seas where the offence is piracy by the law of nations."

106 This also appears to be the case with the British *Courts (Colonial) Jurisdiction Act 1874*, 37 & 38 Vict., c. 27 which, whilst missing from the marginal note to s. 130B, is to be found referred to in the Explanatory Statement (see *supra* note 104). The Parliamentary Debates are equally unhelpful in this regard: see *Singapore Parliamentary Debates*, vol. 61 at col. 612 (12 October 1993).

107 See especially s. 130C(b).

108 8 Geo. I, c. 24. *Cf.* also, the *Piracy Act 1698*, 11 Will. III, c. 7, which refers to mutinous acts (and see s. 130C(c) of the new s. 130C of the *Penal Code*); there is, however, no mention of this *Act* whatsoever in the either the *AELA* or the Bill that preceded it.

109 And *cf.* the marginal note entitled "Piracy by the law of nations."

110 Although it has been pertinently pointed out that both international and municipal elements have often been confused: see O'Connell, *The International Law of the Sea*, vol. II (1984) at 967. And see the marginal note entitled "Piractical [*sic*] Acts."

law;[111] indeed, the Explanatory Statement to the Bill stated that (the present) s. 7 read with the Second Schedule "inserts a number of provisions (*derived from pre-1826 English enactments which will cease to be applicable*)"[112] in the local parent acts concerned. This raises the more general principles governing the *general* reception of English law. Indeed, these principles constitute, in part, the second criterion, to which we now turn.

2. APPLICATION OF THE GENERAL PRINCIPLES RELATING TO GENERAL AND SPECIFIC RECEPTION

It is entirely possible that quite apart from the reliance on prior local case law which either referred to or applied the English statutes concerned (whether Imperial, commercial or general), the Legislature also took into account general views as to which English statutes were, or were not, potentially applicable in Singapore, based on the substantive criteria embodied in the principles pertaining to both general as well as specific reception discussed earlier.[113] Indeed, on occasion, the case law itself applied such criteria, although local courts often assumed a particular English statute to be applicable. In this sense, the criterion centring on previous case law may be seen as less nuanced and, indeed, as merely the "surface manifestation," as it were, of propositions that ought, ideally at least, to be justified by reference to the substantive criteria just mentioned. This absence of analysis and discussion in the case law is not, however, unsurprising in view of, first, the very fluid criteria embodied within the principles governing the general reception of English law in Singapore[114] and, secondly, the equally confusing criteria laid down with regard to the specific reception of English commercial law via s. 5 of the *Civil Law Act*, not the least because of the presence of two irreconcilable Privy Council decisions.[115] Superadded to these problems were (especially in the context of general reception) the huge numbers of

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111 For a general account of the background, see Part II above. And see *per* the Minister for Law, Prof. S. Jayakumar in *Singapore Parliamentary Debates*, vol. 61 at col. 612 (12 October 1993): "... those provisions of the pre-1826 English statutes which are still relevant and applicable in Singapore have been restated and revised in modern form and will be incorporated into the appropriate local Acts."

112 Emphasis added.

113 See Part II above. Insofar as Imperial Legislation is concerned, there is no problem, since they are, by definition, *expressly* extended to the geographical location concerned (Singapore). But *cf.* Bartholomew, *supra* note 49 at 75-76, on the practical difficulties likely to be encountered in the attempted compilation of a list of such legislation; this is, of course, no longer a problem after the *AELA*.

114 See the discussion at Part II, above.

115 See *ibid.* See also, Bartholomew, *supra* note 49 especially at 102.

potentially applicable English statutes which must have made for even greater complexity in the process of ascertainment. Looked at in this light, it is not unsurprising that the first criterion, whether or not there were relevant local precedents, whilst superficial simply because case law can (and, as we have seen, has) often stated an English statute to be applicable without recourse to more substantive reasons, would, to the draftsperson as well as the Legislature at least, have appeared to have been rather attractive. However, when all is said and done, it is submitted that, in the sphere of specific reception of English commercial law at least, there is no reason in principle to vigorously dispute the final list arrived at in Part II of the First Schedule to the *AELA*.[116] Insofar as the more general English statutes are concerned, there is little quarrel that one may have with a great many,[117] the provisions of which have been adopted in modern language by the *AELA*—although it is admitted that with the very broad criteria of generality, suitability and modification, there must have been a great many more English statutes that would have been at least potentially applicable in the local context and that there must have been unstated policy reasons for reducing the list to what appears to be a bare minimum. Indeed—and as alluded to above—these policy reasons may themselves (possibly) comprise yet another criterion.[118] Unfortunately, however, they are unstated and cannot really be inferred from either a mere examination of the language of the *AELA* itself or the rather cryptic remarks in the Explanatory Statement to the Bill.[119] This is, perhaps, to be expected from the very nature of the concept of public policy itself, although it is disappointing that we are not given the actual process of reasoning that prompted the draftsperson as well as the Legislature to arrive at the results it did. It is conceded, however, that given the immense number of statutes as well as the very broad general criteria relating to the general reception of English law which had (theoretically at least) to be applied to so very many potentially applicable English statutes before the final results

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116 As read with s. 4(2) of the same. And see the this writer's own analysis as well as submissions (in the narrower sphere of contract law) in Phang, *supra* note 27 at 272-88 where the *Sockalingam* approach is adopted (see, *supra* notes 33-34, and the accompanying main text). *Cf.*, also, at the Second Reading stage, *per* the Minister for Law, Prof. S. Jayakumar in *Singapore Parliamentary Debates*, vol. 61 at col. 611 (12 October 1993): "... under the Bill a number of very important English commercial statutes will continue to apply in Singapore so that the basis of our commercial law remains very much the same as English commercial law which up till now has been applicable under section 5."

117 Including the *Statute of Frauds 1677*, the *Accumulations Act 1800* and the *Life Assurance Act 1774*.

118 And *cf.* the *New South Wales Report*, *supra* note 56 at 32.

119 Quoted at *supra* note 112. *Cf.* also, at the Second Reading stage, *per* the Minister for Law, *supra* note 111.

could be arrived at, it might not have been feasible for more precise reasons to have been given—an argument that finds support in both the method utilized as well as the results obtained by Sir Leo Cussen when drafting the Victorian *Imperial Acts Application Act, 1922*.[120] Indeed, a comparison of the reception statutes from various jurisdictions referred to during the course of this article will reveal some overlaps, but no discernible pattern as such. It may, of course, be argued that the aforementioned policy reasons are, in substance, the same as the criteria that exist with regard to the general reception of English law (namely, suitability and modification) and thus ought not to be treated separately; alternatively, it may be argued that these policy reasons are, in fact, the application and/or results of the application of these general criteria. These arguments are entirely plausible, especially if one attributes a very broad meaning to the concepts of suitability and modification. However, regardless of the precise terminology attributed to the various criteria, it is clear that given the immense number of English statutes potentially applicable, it is unlikely that *every* such statute would be subject to detailed scrutiny, especially since the "tools" of analysis are, as we have seen, themselves rather fluid.[121] On a more general level, it could be persuasively argued that the *broad overall policy* approach was to *minimize* the number of applicable English statutes—

120 No. 3270—which has since been repealed; see, now, the *Imperial Acts Application Act 1980* (No. 9426) and the *Imperial Law Re-enactment Act 1980* (No. 9407) (all these aforementioned acts did not, however, deal with the common law as such and the classification adopted was somewhat different from that adopted in the 1993 Singapore *Act*, especially where the 1922 *Act* was concerned, there being, *inter alia*, a residuary list of English statutes which, while not repealed, were dependent on their operative effect on decisions by the *courts* (this category was repealed in 1980) as well as a transcription of other English statutes whose applicability was also dependent on decisions by the courts; for an excellent summary of the various categories, see the *Victorian Report*, *supra* note 60 at 76-79, 96-97; *The Commonwealth of Australia—the Development of its Laws and Constitutions* (Gen ed., Paton, 1952) at 5; and Castles, *An Australian Legal History* (1982) at 442-43 (where the latest (1980) developments are also surveyed); and see also, in this regard, *Kewley*, *supra* note 96). And see, on this particular point, the very illuminating comments by Sir Leo Cussen in his Explanatory Paper as well as subsequent Report: see the *Victorian Report*, *supra* at 73, 100 and 102 ("application of judicial tests"); 75 (where no judicial decisions exist, "the conclusion as to their [English statutes'] operation or continuing operation is necessarily unauthoritative, and opinion may vary from complete confidence to extreme doubt"); and see further, note 121, *infra*..

121 Although Sir Leo Cussen stated that he had examined some 7,000 Imperial Statutes: see the *Victorian Report*, *supra* note 60 at 98. And for a detailed account of His Honour's methodology, see *ibid.* at 119-20. It may also be significant to note that Sir Owen Dixon thought that the failure of the Commonwealth Government to appoint Sir Leo Cussen to the High Court of Australia was one of "two tragedies": see (1964) 38 A.L.J. 3 at 6. The following information by Castles on the background to the New South Wales *Imperial Acts Application Act 1969* (No. 30 of 1969) is also worth noting (see Castles, *supra* note 120 at 441): "In New South Wales . . . the Law Reform Commission examined more than 300 separate British statutes which were considered relevant to regulating the operation of received statute law in that State." And see also, the *New South Wales Report* itself: *supra* note 56 at 28-29.

an approach entirely consistent with the ideal of indigenous legal development. Indeed, the sceptic might well go so far as to argue that all decisions, in this particular sphere (of reception) at least, are determined, in the final analysis, by policy, notwithstanding the presence of both prior case law as well as established theoretical criteria.

3. COMMON LAW AND EQUITY

We have, thus far, been considering the possible criteria with regard to the reception of English *statutes*. What about the principles and rules of common law and equity in general and the probable source(s) of s. 3[122] of the *AELA* in particular? There have been various formulations in a great many colonies[123] as well as former colonies,[124] but in all these instances, the language utilized (whilst differing slightly amongst the statutes themselves) was broadly similar. Section 3 of the *AELA*, however, is worded quite differently from these formulations and is phrased in the language of "*continuity*"; this gives rise to several difficulties, which will be dealt with below. Although this writer cannot be absolutely sure, it is clear that the relevant statutory provision in at least one other Commonwealth jurisdiction is very similar to the Singapore provision; this is to be found in s. 5 of the New Zealand *Imperial Laws Application Act 1988*,[125] the background to which will, as we shall see, prove to be most helpful in casting some light on the difficulties generated by its Singaporean counterpart. It will suffice for the moment, however, to state that there is, in the final analysis, very little difference in substance between the Singapore and New Zealand provisions on the one hand and the provisions from other jurisdictions[126] on the other, notwithstanding the rather significant differences in wording referred to above.[127]

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122 For the wording of s. 3 see *infra* text accompanying note 139.

123 See *e.g.*, s. 3 of the Hong Kong *Application of English Law Ordinance* (Cap. 88).

124 See *e.g.*, s. 1 of the *Declaratory Act* (Cap. 4, *The Statute Law of the Bahamas 1799-1987*, vol. 1 (1988)); s. 3 of the *Law of England (Application) Act* (Cap. 60, *The Laws of the Western Region of Nigeria 1959*, vol. 3); s. 2 of the *Law of England (Application) Act* (Cap. 104, *The Laws of The Gambia*, vol. 5 (1967)); and s. 3(1) of the Malaysian *Civil Law Act 1956* (Act 67 (Revised—1972)) as well as s. 2 of the Bruneian *Application of Laws Act* (Cap. 2, The Laws of Brunei Darussalam, 1984 Rev. Ed.).

125 No. 112. Its predecessor was the *English Laws Act, 1908* (No. 55 of 1908; although this was not the first such statute).

126 See *supra* notes 123-24.

127 A clue may be found (in the context of New Zealand) in the the background to the 1988 *Act*: see the discussion below. For general background to the New Zealand legal system, reference may be made to Hutchinson, "The origin of the legal system in New Zealand" [1988] N.Z.L.J. 427 and chap. 1 of Robson, gen. ed., *New Zealand—The Development of its Laws and Constitution*, 2d ed. (1967).

4. CONCLUSIONS

What conclusions, then, can we draw about the probable source(s) of the *AELA*? It is submitted that (quite apart from the common law and equity, the origins of which, as we have just seen, appear to lie in New Zealand) reliance on prior case law probably played the major role in the final configuration of the *AELA*. Because of the difficulties inherent in the substantive criteria existing with regard to both general as well as specific reception prior to the promulgation of the *AELA*, it is not surprising that these criteria probably played a smaller role and is evidenced, in part at least, by the paucity of discussion in the actual case law itself. However, the *AELA* itself is not radically inconsistent with the rational application of such criteria, at least insofar as the commercial statutes are concerned. We have also seen that there were, possibly, also broad policy reasons that were considered in fixing the final contents of the *AELA* (especially in the context of general reception), although it will, in the nature of things, not be clear what these reasons actually were—subject to the possible counter-arguments on this point which we have already dealt with. Whilst not incoherent, therefore, the *precise* sources of the Act are unclear. The *AELA* itself appears to have been the result of the application of overlapping criteria—subject, of course, to acceptance of the arguments canvassed above—with an apparent residue of unstated policy reasons which allowed the draftsperson and Legislature to finalize a list (especially in the context of non-commercial statutes thought to have been previously received by virtue of the *Second Charter of Justice of 1826*) without prolonged agonizing and consequent impasse as well as paralysis. The result, from a theoretical perspective, is perhaps less than satisfactory. However, as already pointed out, the result is wholly desirable from the practical point of view. Indeed—and in accordance with pragmatic considerations—practising lawyers are unlikely to be bothered by the theory underlying the *AELA*; nor do they need to be. There may be a tension between theoretical explanation and practical application, but this is arguably inherent within the entire process of formulating as well as promulgating legislation. Indeed, the relative fluidity accorded to the legislative (as opposed to the common law) process is not only popularly accepted but also appears to be firmly ingrained in the psyche of some jurists[128] and many judges.[129] It is

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128 See *e.g.*, and especially, the following works by R. Dworkin: *Taking Rights Seriously* (1978) and *Law's Empire* (1986).

129 See *e.g.*, Lord Reid, "The Judge as Law Maker" [1972] J.S.P.T.L. 22 and Lord Mackay of Clashfern, "Can Judges Change the Law?" *Proceedings of the British Academy*, vol. LXXIII (1987) at 285. This perception may, of course, be erroneous, but constitutes a large jurispru-

hoped, however, that the discussion here would serve as both a theoretical as well as an historical record that might also be of (admittedly, rare) use in the event that historical arguments are required in a practical context.

B. Problems with the Retention of Specific Reception Provisions

Although, as we have seen, the most problematic (and, arguably, unique) specific reception provision, namely s. 5 of the *Civil Law Act*, has been repealed, s. 4(1)(b) nevertheless preserves the continued reception of English law via other specific reception provisions embodied in various local statutes.[130] And these provisions are to be found scattered amongst a wide variety of local statutes.[131] It is submitted that the presence of these provisions detracts from the general purpose of the *AELA*, which is to achieve certainty in the ascertainment of the applicable English law. Indeed, although s. 5(1) of the *AELA* is apparently intended to limit the applicability of English law to that mentioned in the *AELA* itself, because of s. 4(1)(b), one is ironically forced to look *outside* the *AELA*—at least in certain situations.

It might, in the circumstances, therefore, have been better to have stipulated what provisions (based on the relevant English law) were applicable via additional miscellaneous amendments which could have been placed in the Second Schedule. There is a possible argument, however, to the effect that to do so would have delayed the passage of the *AELA* since more than mere piecemeal amendments would have been entailed. This is a not unattractive argument, although the logical answer would really then to have listed entire statutes, as was effected in the First Schedule (together, of course, with the necessary stipulations as to extent as well as necessary modifications, all of which were, in fact, effected insofar as the local acts listed in the First Schedule were concerned). It is true that a quick perusal of the case law with regard to

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dential issue that cannot be tackled within the present (and more specific) parameters of the present article.

130 And see, *supra* note 42.

131 See *e.g.*, s. 5 of the *Criminal Procedure Code* (Cap. 68, 1985 Rev. Ed.); s. 85 of the *Women's Charter* (Cap. 353, 1985 Rev. Ed.); s. 62(1) of the *Supreme Court of Judicature Act* (Cap. 322, 1985 Rev. Ed.; Reprinted in 1993, Date of Reprint; 10 August 1993); s. 4(1) of the *Notaries Public Act* (Cap. 208, 1985 Rev. Ed.); s. 3(1) of the *Parliament (Privileges, Immunities and Powers) Act* (Cap. 217, 1985 Rev. Ed.); s. 9(3) of the *Government Proceedings Act* (Cap. 121, 1985 Rev. Ed.); s. 102 of the *Evidence Act* (Cap. 97, 1990 Rev. Ed.); s. 6 of the *Registration of United Kingdom Patents Act* (Cap. 271, 1985 Rev. Ed.); s. 2 of the *United Kingdom Designs (Protection) Act* (Cap. 339, 1985 Rev. Ed.); and s. 209 of the *Singapore Armed Forces Act* (Cap. 295, 1985 Rev. Ed.). *Cf.* also, s. 101(2) of the *Bills of Exchange Act* (Cap. 23, 1985 Rev. Ed.) and s. 28(4) of the *Estate Duty Act* (Cap. 96, 1985 Rev. Ed.).

the various specific reception provisions does not appear to suggest any real problems of interpretation: for the most part, in fact, such provisions are merely referred to,[132] although there are occasions when more than mere reference is involved.[133] However, as Professor Bartholomew has very pertinently observed:[134]

> "It is not, however, the actual number of statutes involved that is significant, but rather the uncertainty that such provisions generate, for [such specific reception] provisions . . . constitute hidden traps in that, depending upon how they are interpreted, they may attract the application of English statutes. Legislation in this form possesses a certain charm for a hard pressed draftsman, but, and especially when as is usually the case the 'reception' is 'subject to the provisions of this Act,' very little charm for anyone else, for what the draftsman is saying to the profession and the judiciary is—You sort it out for yourselves! This can induce considerable uncertainty as to which English statutes are applicable. More important from our point of view, however, is the fact that even in those cases about which there is but little doubt, the text of such statutes is not to be found in any printed collection of Singapore statutes. . . ."

It is, however, heartening to note that during the Second Reading stage, the Minister for Law did state, in response to a comment, that steps would be taken to look into these other specific reception provisions.[135]

C. The Failure to Deal with "Colonial *Stare Decisis*"

This is, arguably, not a major issue because the *AELA* deals with the reception of English law, although it should be pointed out that the precise linkage between the concept of reception on the one hand and the concept of *stare decisis* on the other has yet to be fully worked out.[136] Leaving aside, however, the theoretical complications arising from attempts to work out this relationship, the practical problem addressed here which confronts Singaporean practitioners is clear: there is case law

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132 See *e.g.*, with regard to s. 62(1) of the *Supreme Court of Judicature Act*, *Hwang Ju-In* v. *Huang Han Chao*, [1977] 2 M.L.J. 229.

133 See *e.g.*, with regard to s. 85 of the *Women's Charter*, *Tan Kay Poh* v. *Tan Surida*, [1989] 1 M.L.J. 276 and, with regard to s. 5 of the *Criminal Procedure Code*, *CP Ansell* v. *Regina*, [1952] M.L.J. 143 (a case originating in Penang); *Ng Kwee Piow* v. *Reg.*, [1960] M.L.J. 278; and *Kulwant* v. *Public Prosecutor*, [1986] 2 M.L.J. 10—although it should be noted that even in these two instances, there are numerous other cases which do not really impact on the substantive law as such, at least insofar as interpretation of the respective provisions themselves are concerned.

134 Bartholomew, *supra* note 5 at 15.

135 *Per* Prof. S. Jayakumar: see the *Straits Times* (13 October 1993) 17. See now, *Singapore Parliamentary Debates*, vol. 61, especially at cols. 615-16 (12 October 1993).

136 I attempt to deal with this problem in a brief fashion in Phang, *supra* note 19 at 262-65.

authority suggesting that under certain circumstances, certain foreign (in particular, English) decisions are binding on local courts.[137] Whilst I have argued that the relevant decisions suggesting such an approach suffer from defects in rationale or authority or both and should therefore be disregarded by the local courts, it would have been preferable for the Singapore Legislature to have placed this issue beyond doubt by enacting that no non-Singaporean decision should be binding on local courts,[138] an amendment that could conceivably have been introduced by the present *AELA* and which would, simultaneously, have conduced toward the development of a distinctly Singaporean legal system.

D. Common Law and Equity

This matter is dealt with in s. 3, which reads as follows:

> 3.(1) The common law *of England* (*including* the *principles and rules* of *equity*), *so far as* it *was part of the law of Singapore immediately before* the commencement of this Act, shall *continue* to be *part of* the law of Singapore.
>
> (2) The common law shall *continue* to be in force in Singapore, as provided in subsection (1), so far as it is *applicable* to the *circumstances of Singapore and its inhabitants and* subject to such *modifications* as *those* circumstances may require.[139]

This provision does not, at first blush, appear to be problematic. There is, however, a slight problem of interpretation which may, as I will attempt to argue later, not be very crucial when viewed from a practical perspective. The issue centres on the ascertainment of the precise corpus of the principles and rules of common law and equity that is indeed part of Singapore law. The language of s. 3(1) does not, it is respectfully submitted, conduce to clarity insofar as this particular issue is concerned—despite the more general, and not implausible, argument to the effect that s. 3(1) is declaratory in nature,[140] for the concept can be

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137 For a fuller discussion, see A. Phang, "'Overseas Fetters': Myth or Reality?" [1983] 2 M.L.J. cxxix.

138 *Ibid.* Problems of *stare decisis* in the strictly local sphere would, however, remain; though see the suggestion for reform in Phang, Rajah & Tan, "The Case for a Re-Appraisal and Re-Statement of the Doctrine of Stare Decisis in Singapore" [1990] 2 M.L.J. (in 3 parts) at xxi, xcvii and cxiii. See, now, the Practice Statement (Judicial Precedent), [1994] 2 S.L.R. 689.

139 Emphasis added.

140 See not only the general tenor of the provision but also the word "continue," which is also to be found in s-s. (2). It is submitted that the Minister for Law's statement during the Second Reading stage (which became available after this article has been completed: see *Singapore Parliamentary Debates*, vol. 61 at col. 611 (12 October 1993)) does not provide a definitive answer to the possible interpretations considered below: "Clause 3 is a declaratory provision of the existing legal position. It preserves the corpus of English common law (including the

interpreted in different ways. There are, in this regard, at least two possible interpretations—although yet a third interpretation is also possible, as we shall see.

First, it could be argued that s. 3(1) is declaratory of the law of Singapore not only as to the past (*i.e.*, prior to the coming into force of the *AELA*) but also the future; in other words, the provision is declaring not only that the principles and rules of common law and equity that existed prior to the commencement of the *AELA* continue to be part of Singapore law but also that (at least by implication) the principles and rules of common law and equity that come into being *after* the commencement of the *AELA* are *not* part of Singapore law. Such an interpretation would, of course, effect a *de jure* "cut-off" date for the common law. There is, as I have sought to argue elsewhere,[141] nothing inherently objectionable in having a "cut-off" date for rules and principles of common law and equity. Indeed, the provision (in s. 3(2)) for application of the concepts of suitability and modification (to be considered in more detail below) is entirely in accord with the spirit behind such an interpretation. Insofar as the common law and equity prior to the commencement of the *AELA* are concerned, the proposition (in s. 3(1)) that they are part of the corpus of Singapore law is, in effect, only a *prima facie* assumption because the Singapore courts can exclude them (exercising the power conferred in s. 3(2)) by applying the principles of suitability and/or modification. Insofar as the common law and equity after the commencement of the *AELA* are concerned, the proposition (in accordance with the interpretation presently considered) to the effect that they are not part of the corpus of Singapore law is not a real obstacle to the Singapore courts which can nevertheless voluntarily adopt the rule or principle concerned, if it is thought appropriate[142] to the circumstances of Singapore; indeed, adoption of such an interpretation actually encourages the development of an autochthonous or indigenous Singapore legal system[143] inasmuch as there is no *prima facie*

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principles and rules of equity) that now applies or has been received in Singapore as part of the law of Singapore. It is not intended to change the legal position as regards the applicability of the common law of England, which to the extent that it continues to apply, is subject to such modifications as the circumstances may require." It would appear, however, that the second interpretation (to be considered below) is probably the weakest one, having regard to the statement just quoted.

141 See *supra* note 20.

142 Probably in accordance with the criteria set out in s. 3(2).

143 See generally, Phang, *supra* note 5 especially at 91-96. It should be mentioned that such development can be achieved at at least two levels, although one ought not to be too dogmatic about the levels which can, on occasion at least, be quite fluid and blurred: see Phang, *supra* note 6. For a recent example of a bold move away from English law, see the decision of Lai Kew

assumption that the principles and rules of common law and equity promulgated *after* the commencement of the *AELA* are applicable which would have placed the onus on the local courts to reject the particular principle or rule concerned on the basis of either suitability and/or modification. It may be argued that this merely shifts the burden or onus, but it is submitted that such a shift is significant insofar as it is more in accord with the spirit of autochthonous development.

A second and alternative interpretation of s. 3(1) is to the effect that the provision merely reiterates the position that existed prior to the promulgation of the *AELA* and is declaratory in only *that* particular (and more restrictive) sense. In other words, all that s. 3(1) is stating is that the principles and rules of common law and equity prior to the commencement of the *AELA* continue to be part of Singapore law[144] but makes no positive statement as to whether or not the principles and rules of common law and equity made after the commencement of the *AELA* are part of Singapore law. Looked at in another sense, there is (unlike the first interpretation) neither an express nor an implied statement on the status of the principles and rules that are made after the coming into force of the *AELA*. If this interpretation be accepted, then it would favour the first interpretation considered above, which actually *rejects* the the first interpretation considered above, which actually rejects the declaratory theory altogether.

It is submitted that the first interpretation is to be preferred for several reasons. First, and on a point of general principle, there is no reason why a "cut-off" date is unfeasible for the unwritten law, especially since the Blackstonian declaratory theory is outmoded.[145] Second, and still on a more general level, the former interpretation would aid in the development of a distinctively Singaporean legal system. Third, we have seen that s. 3 is probably based upon s. 5 of the New Zealand *Imperial Laws Application Act 1988*.[146] Even if this is not in fact the case, it is submitted that the closeness in language would render any aid to construction *vis-à-vis* the New Zealand provision helpful in the interpretation of s. 3 of

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Chai J. in *Sumitomo Bank Limited* v. *Kartika Ratna Tahir*, [1993] 1 S.L.R. 735, which was approved by the Privy Council in the even more recent decision of *Attorney General for Hong Kong* v. *Charles Warwick Reid*, [1993] 3 W.L.R. 1143.

144 One notes the phrase "so far as it was part of the law of Singapore immediately before the commencement of this Act" in s. 3(1). It is submitted that all this phrase means is that the principles and rules of common law and equity were subject to the tests of suitability and/or modification, which tests are, in fact, statutorily embodied in s. 3(2), as we have previously noted.

145 And see, generally, *supra* note 20.

146 See *supra* note 125.

the local *Act*. In this regard, it should be noted that the relevant *New Zealand Parliamentary Debates* appear to suggest that a "cut-off" date was indeed intended. In response to an argument to the effect that the predecessor of the 1988 *Act* (*i.e.* the *English Laws Act, 1908*,[147] which had expressly stated a "cut-off" date for, *inter alia*, the common law as at 14 January 1840[148]) would be done away with by the 1988 *Act*, which in s. 7 repealed its 1908 predecessor,[149] the Minister of Justice[150] stated that, "that spent statute [the repealed 1908 *Act*] is still the source of the date when it [the common law] first arrived."[151] Presumably, this was said on the basis that the 1988 *Act* was intended to be declaratory, as was the language of s. 5 itself.[152] It may be argued that this construction was possible in the New Zealand context simply because there already existed a "cut-off" date prior to the enactment of the 1988 *Act*, in particular s. 5 thereof, whereas insofar as Singapore is concerned, whilst the language of s. 3(1) of the *AELA* is very similar to that of s. 5 of the New Zealand *Act*, the prior circumstances were quite different. This argument, it is submitted, will only be persuasive if it can be demonstrated that there was no "cut-off" date (of 1826)[153] prior to the enactment of s. 3 of the *AELA*. However, it has already been suggested that there is no reason why there ought not to have been a "cut-off" date for the common law,[154] and if this be the case, there is no reason why s. 3(1) of the *AELA* cannot be construed as preserving the situation which antedated its promulgation, thus preserving the cut-off date of 1826. In other words, as was the position in New Zealand, what s. 3(1) does in the local context is to declare (and thus preserve) the pre-existing position which is, arguably at least, premised on a "cut-off" date of 1826.

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147 No. 55 of 1908.

148 Although it should be noted that this "cut-off" date was first stated in an an even earlier (1858) *Act*. Reference may also be made to the *New Zealand Report*, *supra* note 101 at 2. However, it should also be noted that the Law Commission adopted (at 3-4) a somewhat different position in this *Report* by proposing that the Bill *not* refer to the common law at all. It recognized the reality of the court's daily reference to the common law regardless of vintage, but took issue more with the specific proposal in the original Bill to the effect that the 1840 English common law would apply except insofar as it had "been effectively amended or affected" by enacted law, whether New Zealand or English in origin. It should, however, also be noted that the Law Commission did, in its Conclusion, state (at 35) that its proposed Bill "would not affect in any way . . . the common law."

149 See *per* Paul East (Rotorua) during the Second Reading stage of the Imperial Laws Application Bill, [1988] 490 *New Zealand Parliamentary Debates* at 5113-114 (14 July 1988).

150 The Rt. Hon. Geoffrey Palmer.

151 See [1988] 490 *New Zealand Parliamentary Debates* at 5120 (14 July 1988).

152 See *e.g.*, *ibid.* at 5111. See also the *New Zealand Report*, *supra* note 101 at 6-7.

153 And see *supra* note 19.

154 See *supra* note 20.

However, it is admitted that this historical excursus does not really aid the argument made here simply because the popular notion is that the common law is "timeless." But it is submitted that theoretical cogency should not take, too readily at least, a backseat to popular notions, and, to the extent that there is an at least viable argument in favour of a "cut-off" date, coupled with the other arguments advanced above, it is respectfully submitted that there should be a "cut-off" date.

If, however, the historical analysis pertaining to the New Zealand provision as set out in the preceding paragraph is applicable in the local context, this would give rise to yet a third possible alternative which is, in effect, closer to the first—that there is a "cut-off" date, but not as at 1993 (which is the result of the first interpretation) but, rather, as at *1826*. This interpretation neatly illustrates the impact that historical context can have on a given issue; indeed, the first interpretation is supported, in the main, by a *literal* construction of s. 3(1) itself. It is submitted that there is little to choose between the first and third interpretations, although if the arguments in the New Zealand context are ignored, the first interpretation must, on a literal construction, be favoured.

It is submitted, however, that whichever interpretation is ultimately adopted will be of little practical moment. Adopting the first interpretation does not preclude the local courts from incorporating relevant principles and rules of both common law and equity as enunciated by the English courts into the corpus of Singapore law; the same may be said of the third interpretation, the difference between the two being the "cut-off" date adopted (*i.e.*, either 1826 or 1993). The second interpretation may appear to be somewhat stricter, albeit (as we have seen) quite strongly etched into the Singaporean legal psyche. However, it, too, does not preclude indigenous development for if, indeed, the reception of common law and equity is a continuing one, s. 3(2) of the *AELA* ensures that although such English law is *prima facie* part of the corpus of Singapore law, it can nevertheless be excluded by recourse to the concepts of suitability and modification. In the final analysis, the issue really centres on the particular starting-point adopted and, as already pointed out, the first and third interpretations, by shifting the onus for adoption of principles and rules beyond the "cut-off" date on parties arguing for their reception, is actually more in accord with the spirit behind indigenous or autochthonous development.

There are other issues as well: for example, s. 3(2) of the *AELA* clearly assumes that the concepts of suitability or applicability on the one hand and modification on the other are clear and distinct. This belies the fact

that there can be a not insignificant amount of overlap and, indeed, blurring of the lines.[155] It also does not get rid of the problem as to the precise criteria that are to be utilized in the application of the concepts as well as the date at which they are to be applied.[156] This lastmentioned point is not, of course, intended as a critique simply because the quantum of principles and rules of common law and equity as well as the multifaceted local conditions of Singapore would render any legislative attempt at setting out criteria an exercise in futility. But the problem remains, notwithstanding; and the local courts will have to do their level best in dealing with fact situations as and when they arise. This resultant fluidity need not necessarily be a bad thing; after all, the unwritten law has always been a fertile field for indigenous development simply because it pertains to rules and principles which, whilst constrained by certain fixed parameters, have always had the potential for flexible interpretation and consequent development.

Yet another problem pertains to the *scope* of s. 3 itself. As a preliminary point, it is interesting to note that s. 3(1) refers to the "principles and rules of equity," thus endorsing (whether intentionally or otherwise) the distinction drawn by Ronald Dworkin between rules on the one hand and principles on the other.[157] Section 3(1) itself refers to both common law and equity. The inclusion of the latter obviates any objection to the effect that principles and rules of equity have been inadvertently excluded. However—and although this will probably not be an issue in the Singaporean context—could arguments be made to the effect that other types of law (for example, ecclesiastical law) have been inadvertently excluded?[158] As just mentioned, it will be very difficult to envisage any other broad category of law that will not somehow come within the ambit of either the common law or equity, the prominent exception being ecclesiastical law, which will probably be held to be inapplicable in any event, given the multi-religious nature of Singapore itself. However, Professor Peter Wesley-Smith, writing in the Hong Kong context,

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155 See *supra* note 23.

156 See *supra* notes 21 and 22, as well as Phang, *supra* note 19 at 249-62.

157 See especially, "The Model of Rules I" in chap. 2 of *Taking Rights Seriously*, *supra* note 128; and see, in addition to the works cited in that note, *A Matter of Principle* (1985), also by the same author.

158 And see *e.g.*, *Ex parte The Rev. George King*, [1861] 2 Legge 1307 where ecclesiastical law was held not to be part of the common law. The "common law" in the (Singapore) *Interpretation Act* (Cap. 1, 1985 Rev. Ed.) is stated, in s. 2(1), as meaning "the common law of England," which is not, of course, particularly helpful, since it merely reiterates what is stated in s. 3(1) of the 1993 *Act* itself. To like effect, see s. 3 of the Hong Kong *Interpretation and General Clauses Ordinance* (Cap. 1, 1989 Ed.).

also points to the admiralty law, law merchant and international law.[159] It is respectfully submitted that the only real problem may arise with regard to international law, which would, in any event, be treated as *sui generis*, unless embodied within a local statute, in which case the problem presently canvassed will not arise.[160]

One final possible problem relates to the impact (if any) of English statutes which affect hitherto existing principles and rules of both the common law as well as equity. The problem would be especially acute if there were no discernible "cut-off" date as such—a point that, as we have seen, is not wholly clear from a construction of s. 3(1) of the *AELA*. That this problem can engender relatively complex issues is demonstrated by case law in the Hong Kong context, where subsequent legislative amendments have merely complicated, rather than simplified, the issues concerned.[161] It is submitted that the principles and rules of common law as well as equity referred to in s. 3(1) of the *AELA* do not, in the absence of any indication to the contrary, include the impact of any English statutes whatsoever. Indeed, the very purpose of the *AELA* itself, *i.e.*, to be exhaustive,[162] militates against any proposition to the contrary. It is submitted that, in any event, the provision for suitability and modification in s. 3(2)[163] would provide the local courts with the flexibility required to obviate any difficulties generated by issues such as the one considered in the present paragraph.

E. Statute Law—Listing Versus Local Re-enactment

It is, in this writer's view, unfortunate that the approach of listing both Imperial Acts as well as commercial English statutes (in the First Schedule of the *AELA*) was taken instead of direct re-enactment in the local context. As will be seen below, whilst justifiable as an interim measure in the short term, it would not have been unfeasible for the Singapore Legislature to have proceeded by way of local re-enactment

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159 See his very comprehensive article, "The Reception of English Law in Hong Kong" (1988) 18 H.K.L.J. 183 at 189; and see, generally, the discussion at 188-90.

160 And see Wesley-Smith, *ibid.* at 190, note 29: "It may be that Hong Kong received the common law rule that customary international law automatically enters the law of England and then modified it so as to receive such law into the law of Hong Kong." Indeed, many writers assume that customary international law is part of the common law.

161 See Wesley-Smith, "The Effect of Pre-1843 Acts of Parliament in Hong Kong" (1984) 14 H.K.L.J. 142. The relevant cases are *Maurice Andre Gensburger* v. *Evelyn Apryl Gensburger*, [1968] H.K.L.R. 403 and *Oceania Manufacturing Co.* v. *Pang Kwong-hon*, [1979] H.K.L.R. 445.

162 But *cf.* the provision for the continuation of specific reception provisions in local statutes: see the discussion above.

163 Which is, incidentally, also present in s. 3(1) of the Hong Kong *Application of English Law Ordinance* (Cap. 88).

instead. In Hong Kong, for example, the U.K. *Unfair Contract Terms Act 1977*[164] has been substantially re-enacted as the *Control of Exemption Clauses Ordinance*[165]—although it might be argued that the Hong Kong Legislature had little choice in the matter since the list of English statutes in the Schedule to the Hong Kong *Application of English Laws Ordinance*[166] sets a "cut-off" date of 5 April 1843.[167] However, it is submitted that notwithstanding the reason for the local re-enactment, this particular instance demonstrates that it can, in fact, be done. Indeed, in the local context itself, the *Frustrated Contracts Act*[168] is an excellent, albeit isolated, example of local re-enactment of an English statute.[169] This leads to the next point, which is, in fact, relatively significant: the actual number of English statutes listed in the First Schedule of the *AELA* is not large, namely, three Imperial Acts and thirteen commercial Acts. This would suggest that the time and resources required to re-enact these statutes in the local context would not have been unduly onerous. I have, elsewhere, also argued that, at least insofar as the commercial context is concerned, investor confidence would probably be encouraged further by the legislative format in which the commercial law of Singapore is embodied (as opposed to mere listing, which is the present position); such an argument (especially when viewed from the psychological perspective) cannot, it is submitted, be gainsaid. Further, it is submitted that, in the process of local re-enactment, *improved versions* of hitherto applicable English statutes, an example of which has to do with unresolved issues centring on s. 2 of the U.K. *Misrepresentation Act 1967*,[170] which is, in fact, listed in Part II of the First Schedule to the *AELA*.

Finally—and this is a point not unrelated to that pertaining to investor confidence made earlier—it is submitted that the retention of the list of English statutes as set out in the First Schedule to the *AELA* is inconsistent with the independent status of Singapore. If, as already argued, the quantum of English statutes that should be re-enacted

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164 Chapter 50, and which is listed in the First Schedule to the *AELA*.

165 Cap. 71.

166 Cap. 88.

167 See *ibid.* s. 5(c).

168 Cap. 115, 1985 Rev. Ed.

169 And see generally, Phang, *supra* note 27, at 290-91; but *cf.* the early attitude toward the U.K. *Misrepresentation Act 1967* in *Singapore Parliamentary Debates*, vol. 28 at col. 1008 (10 April 1969); see also, Phang, *ibid.* at 276-77.

170 Although some of the problems, at least insofar as s. 2(1) of the U.K. *Act* is concerned have been resolved by the recent English Court of Appeal decision of *Royscot Trust Ltd.* v. *Rogerson*, [1991] 3 W.L.R. 57. See also, Phang, *supra* note 27 at 289, 292. Admittedly, s. 8 of the *AELA* (discussed below) might be utilized, but this would not take into account the arguments made here.

locally is manageable, there is no reason why this should not be done. It is, in fact, believed that ultimate re-enactment, in the local context, of all the English statutes listed in the First Schedule is envisaged by the Singapore Legislature. Indeed, in Hong Kong, itself still a colony, steps have been taken in this direction and, at the date of writing, there have been forty-one deletions from an original list of seventy statutes (applicable in various degrees) in the Hong Kong *Application of English Law Ordinance*.[171] However, it should, in this regard, be admitted that the Singapore Legislature has, in fact, already embarked on the process of local re-enactment in the *AELA* itself, introducing local versions, as it were, of what were felt to be applicable (pre-1826) English statutory *provisions*[172]—an approach that is both logical and perfectly understandable as an initial step, since piecemeal provisions are involved. However the relatively manageable number of English statutes listed in the First Schedule of the *AELA* makes it feasible for the Singapore Legislature to proceed forthwith with the process of local re-enactment, completing it in as short a time as possible. Whilst it may quite sensibly be argued that the listing of statutes in the First Schedule of the *AELA* is a mere interim measure prior to local re-enactment, the danger is that (especially with the increasing passage of time) there might no longer be felt a need, on pragmatic grounds, to effect local re-enactment. But, as already argued, this would miss the broader, yet no less important, point relating to the independent status of Singapore and the concomitant need to develop a truly indigenous legal system. Even if the initial point of departure is English law, albeit with local labels (although this would miss the point of "improved versions," made earlier), local re-enactment would nevertheless represent a positive shift toward a local jurisprudence from a symbolic point of view. And as I have alluded to above, the power of symbolism (especially from a no less tangible psychological perspective) should not be underestimated.

F. Statute Law—The Provision for Flexibility

Section 8 of the *AELA* reads as follows:

> The Minister may, on the advice of the Law Revision Commissioners *and* where he considers it *necessary or expedient* for the *purpose of removing any*

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171 Cap. 88 (the *Ordinance* is now to be found, as other Hong Kong statutes, in a looseleaf format that is updated regularly; and see the *Laws (Loose-leaf) Publication Ordinance 1990* (No. 51 of 1990)). Though *cf.* note 172, *infra*..

172 See the discussion centring on probable sources, above. Indeed, the same result has, in substance, been achieved in Hong Kong with regard to certain of the items hitherto in the Schedule to its *Application of English Law Ordinance* (Cap. 88).

difficulty arising from local conditions or circumstances in the *application* of any provision in any English enactment[173] *specified in the First Schedule*, by *order modify or substitute that* provision [emphasis added].[174]

This type of provision is not unusual and can be found in other similar statutes,[175] although jurisdictions such as New Zealand have opted to have no such provisions whatsoever on the basis that if the omission were sufficiently serious, the Legislature should deal with it.[176] However, the Singapore provision, as framed, is not without difficulties.

First, such modification or substitution as envisaged by s. 8 must entail something more substantive than mere modification of provisions on a superficial level, the provision for which is made in s. 4(2)[177] (read with both the fourth column of Part II as well as Part III of the First Schedule) and (the more general provision in) s. 4(4). If this be the case, then would it not be a more feasible alternative to effect such substantive changes via a legislative amendment, which presupposes, in turn, a locally re-enacted principal act to begin with?[178] It is submitted that the argument canvassed above with regard to psychology as well as autochthony would apply equally here.

Secondly, the language of s. 8 is rather cryptic. Does the provision allow for the total excision of a provision in a listed English statute which is, or becomes, inapposite to the local circumstances? The words "modify or substitute" would suggest not, unless the word "modify" is given a very large meaning; the word "substitute," on the other hand, implies replacement with something tangible and itself creates problems, for would this mean that the Minister could substitute what is essentially a *local* (and quite different) provision for the English provision concerned —which would give rise to a patchwork of English and local provisions, in which case the further question arises as to where the line is to be

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173 As to which, see s. 2; see also *supra* note 43.

174 *Cf. per* the Minister for Law, Prof. S. Jayakumar, during the Second Reading stage in *Singapore Parliamentary Debates*, vol. 61 at cols. 612-13 (12 October 1993) where the focus appears to be a narrow one; and see the discussion following.

175 See *e.g.*, s. 5 of the Hong Kong *Application of English Law Ordinance* (Cap. 88); s. 8 of the Victorian *Imperial Acts Application Act, 1922* (No. 3270; although this latter provision still entails a *court* decision: see the *Victorian Report, supra* note 60 at 102; on the fate of the 1922 *Act*, see *supra* note 96); s. 11 of the New South Wales *Imperial Acts Application Act 1969* (No. 30 of 1969; and see the *New South Wales Report, supra* note 56 at 34); *cf.* also, the *Australian Capital Territory Report, supra* note 56 at 5.

176 And see the views of the Minister of Justice (The Rt. Hon. Geoffrey Palmer) during the Second Reading stage of the Imperial Laws Application Bill: [1988] 490 *New Zealand Parliamentary Debates* at 5113 (14 July 1988). *Cf.* also the *Australian Capital Territory Report, supra* note 56 at 5.

177 See *supra* note 51.

178 Considered in the preceding Section of this article.

drawn with regard to substitution? It might, at this juncture, be argued that the modification or substitution envisaged may pertain to a future *English* (legislative) amendment. While this situation must have been envisaged (and even perceived as being the primary function of s. 8 itself, although we should bear in mind the wariness expressed with regard to divergences stemming from the United Kingdom's position in the European Union), an amendment act that does nothing more than delete substantive provisions would not, if the arguments above are accepted, be accommodated within the language of s. 8 itself.

It is submitted that (and leaving aside for the sake of argument the propositions earlier proffered with regard to local re-enactment) it might have been preferable for s. 8 to have been phrased in more general terms providing for either the addition or deletion of entire statutes (or provisions thereof) listed in the First Schedule, much along the lines of other similar statutes;[179] such a provision would, incidentally, have encompassed subsequent English amendments that were considered appropriate to adopt. However, it could be argued that the English statutes listed in the First Schedule would, in the first instance, be *prima facie* suitable to local circumstances simply because of the prior scrutiny which resulted in the extent to which the English statute concerned applied being specified in the fourth column of Part II of the First Schedule; nor would there be likely to be inapposite phraseology because of the provisions embodied within the *AELA* itself.[180] Hence, and quite apart from the potential applicability of subsequent English amendment acts, the advantage of retaining s. 8 in its present form would be to allow the modification or substitution of the provision(s) of listed English statutes by way of *local* inroads. However, as we have seen, s. 8 does not, where *total excision* is concerned, appear to fulfil its function in any event, although one persuasive argument against the suggestion in this paragraph is the danger of re-introducing the very uncertainty that the *AELA* seeks to eradicate; a counter-argument to this lastmentioned point, however, is that even if s. 8 were phrased in broad terms, a *reasoned application* would ensure that only the most serious situations would warrant an invocation of the provision itself.

Finally, we turn to a rather important and related point: what if entire English statutes, or provisions thereof, have been inadvertently omitted from either the lists in the First Schedule or (in "local" form) the Second

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179 *Supra* note 175.

180 Section 4(2) read with Part III of the First Schedule as well as s. 4(4).

Schedule and vice versa?[181] What if English statutes once thought unsuitable and therefore not placed within the four corners of the *AELA* are felt, with a future change in local circumstances, to be entirely apposite in the local context or vice versa? And what if English statutes wholly unrelated to either the listed statutes in the First Schedule or the amendments in the Second Schedule are felt to be suitable to be adopted in Singapore? Section 8 does not provide for these situations, being concerned (as we have seen) only with either the modification or substitution of existing provisions (and only of English statutes listed in the First Schedule at that). The suggestion proffered in the preceding paragraph would take care of this problem as well. It might, however, be argued that such statutes could nevertheless be re-enacted as local statutes.[182] This is perfectly true, but would this not be an argument in favour of local re-enactment of all applicable English statutes in the first place, given that there were (as we have seen) relatively few statutes to begin with? Indeed, given that local re-enactment *is* envisaged, would it not have been better to have begun with what were perceived to be the "core" English statutes?[183] It might, of course, be argued that local re-enactment can be initiated with statutes in the categories enumerated in the present paragraph. Whilst such an argument is not untenable, to say the least, it is submitted that, given the initial premise of listing, a general provision allowing for either adding to or subtracting from the list in the First Schedule would have given the appearance of consistency in approach, whilst simultaneously affording the local Legislature the opportunity to attempt to locally re-enact the statutes already listed in the First Schedule and impliedly (at least) considered to be "core" statutes. Adoption of such an approach would, of course, entail the creation of yet another Part in the First Schedule dealing with general (presumably pre-1826) English statutes, or parts thereof.

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181 This can, of course, be a matter of dispute: compare *e.g.*, the radically contrasting approaches of the New Zealand Law Commission (relying, *inter alia*, on the views in the various Australian reports as well: *New Zealand Report*, *supra* note 101 at 20) and of Prof. G. W. Bartholomew (*supra* note 49 at 67) with regard to the statute *Quia Emptores 1289-1290* (18 Edw. I) which was not included in the *AELA*. A number of Australian states have, in fact, included this statute: see *e.g.*, s. 36 of the New South Wales *Imperial Acts Application Act 1969* (No. 30 of 1969; see, also, the *New South Wales Report*, *supra* note 56 at 52-56); the Table of Imperial Acts and Documents Applicable to Tasmania in *Tasmanian Statutes 1826-1959*, vol. 6 at 844; see, also, Part II, Division 22 of the Victorian *Imperial Acts Application Act 1922* (No. 3270; though *cf.*, *supra* note 96, on the fate of the 1922 *Act*); and the Australian Capital Territory's *Imperial Acts (Substituted Provisions) Ordinance 1986*, s. 3(1) read with Schedule 1 and Schedule 2, Part 2 (No. 19 of 1986; see, also the *Australian Capital Territory Report*, *supra* note 56 at 12); *cf.* also Kewley, *supra* note 96 at 60-63.

182 *Cf.* the New Zealand position: *supra* note 176.

183 *Ibid.*

V. CONCLUSION

Notwithstanding some of the difficulties considered above, the *AELA* is a landmark statute: it eradicates, once and for all, the uncertainty surrounding the applicability of English statutes in Singapore, commercial or otherwise. Certainty and accessibility are thereby improved,[184] and it might, at this juncture, be interesting to note that there is provision for the publication of a revised edition of the English statutes listed in the First Schedule.[185] There might be a slight hiccup with regard to the common law, although it has been submitted that it is of no practical moment. Indeed, the *AELA* will be heartily welcomed by both legal practitioners as well as judges alike.[186] And this is the enduring legacy of the *AELA*: by cementing the legal foundation, the stage is stabilized and set, as it were, for indigenous development.[187] This is all to the good, although, as we have seen, this practical certainty has been bought, to a certain extent at least, at the price of a coherent theoretical rationale, as we have seen when attempting to ascertain the precise sources of the *AELA*. However, this is not to state that the *AELA* wholly abandoned principle; on the contrary, we have seen that there was probably an attempt to utilize a number of established overlapping criteria that antedated the *AELA* itself; in addition, many criteria were themselves either vague and/or riddled with difficulties in any event, and one may well conclude that the *AELA* has at least cut the Gordian knot in these respects.

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184 See also, *Victorian Report*, *supra* note 60 at 73 and *New Zealand Report*, *supra* note 101 at 1. Reference may also be made to [1988] 489 *New Zealand Parliamentary Debates* at 4259 (9 June 1988, *per* the Minister of Justice, the Rt. Hon. Geoffrey Palmer).

185 See s. 9 of the *AELA*. See, also, s. 18 of the *Revised Edition of the Laws Act* (Cap. 275, 1985 Rev. Ed.). It should be noted that since this article was written, local revised editions of the U.K. enactments listed in the First Schedule of the *AELA* (which, incidentally, has now been reprinted as Cap. 7A, 1994 Rev. Ed.) have been published pursuant to s. 9. Each of these revised editions has the same short title as its English counterpart, with the exception of the year of enactment, which has been excluded. Two exceptions are the *Supply of Goods and Services Act 1982* and the *Carriage of Goods by Sea Act 1992*, which have been *renamed* as the *Supply of Goods Act* and the *Bills of Lading Act*, respectively. The enactments are as follows: the *Bills of Lading Act* (Cap. 384, 1994 Rev. Ed.); the *Corporate Bodies' Contracts Act* (Cap. 385, 1994 Rev. Ed.); the *Factors Act* (Cap. 386, 1994 Rev. Ed.); the *Marine Insurance Act* (Cap. 387, 1994 Rev. Ed.); the *Mercantile Law Amendment Act* (Cap. 388, 1994 Rev. Ed.); the *Minors' Contracts Act* (Cap. 389, 1994 Rev. Ed.); the *Misrepresentation Act* (Cap. 390, 1994 Rev. Ed.); the *Partnership Act* (Cap. 391, 1994 Rev. Ed.); the *Policies of Assurance Act* (Cap. 392, 1994 Rev. Ed.); the *Sale of Goods Act* (Cap. 393, 1994 Rev. Ed.); the *Supply of Goods Act* (Cap. 394, 1994 Rev. Ed.); the *Third Parties (Rights Against Insurers) Act* (Cap. 395, 1994 Rev. Ed.); and the *Unfair Contract Terms Act* (Cap. 396, 1994 Rev. Ed.).

186 Not to mention students, whose focus will no longer be on the intricate complexities surrounding both the general as well as specific reception of English law.

187 See the *New Zealand Report*, *supra* note 101 at 1-2. See also, with regard to the Second Reading stage of the *AELA* itself, the observations by the Minister for Law, *supra* notes 8 and 135.

It is, however, suggested that, if the opportunity permits in the future, some amendments could be effected to the *AELA*. First, the Legislature could do away with "colonial *stare decisis*"[188] once and for all by simply stipulating that no non-Singaporean decision is binding on local courts. Second, it is suggested that inserting an express "cut-off" date *vis-à-vis* the principles and rules of common law and equity would make for more clarity, as would a provision or addition with regard to the status of international law.[189] Third, it is hoped that the Legislature will embark on the process of re-enacting the various English statutes listed in the First Schedule as soon as possible; indeed, it is also hoped that "improved versions" of such statutes will be produced. Finally, it is submitted that, in the interim period, s. 8 of the *AELA* be amended in order to not only allow maximum flexibility but also to make it clear that total excision is also permissible.[190]

Notwithstanding the suggestions proffered in the preceding paragraph, it is clear that with the passage of the *AELA*, the Singapore legal system has come of age and that the stage has been set for the development of the legal system through the next century.

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188 See the discussion at Part IV above.

189 See *ibid.*, for a discussion of the problems.

190 *Ibid.*