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Singapore: Sources of Law

Singapore is a republic with a parliamentary system of government based on the Westminster Model, often



adopted by countries that are, or were, members of the Commonwealth.

There are generally four sources of law in Singapore which comprise:

- 7 Constitution Law,
- 7 Legislation,
- 7 Judicial Precedents (Case Law), and
- 7 Customs.

CONSTITUTION

Constitutional law relates to the study, practice, interpretation and administration of laws set forth by a country's constitution. The constitution is a primary source of law. It is a document that lays down the rights, liberties, and freedoms of all individuals.

Under Article 4 of the Constitution, the Constitution is the supreme law of the land and any law which is not consistent with it is void. It sets out the most basic laws of the land, spells out how governments are to be elected, rights of citizens (and residents of the state) and the powers of the state and representatives. Generally, cases involving Singapore constitutional law are heard by the Singapore Supreme Court. They then write opinions or judgments based on their interpretation of the law.

LEGISLATION

Legislation is another important source of law in Singapore. Legislation is laws written and passes Parliament. These laws are also known as *statutes*.

Currently, there are over 300 statutes. This large number of statutes proves how the divergence between the common law and civil law systems is now less marked than in the past. common law jurisdictions have, for

instance, embarked upon legislative programs to fill the perceived gaps of the common law. In this regard, Singapore has enacted various statutes to govern specific areas of law (such as the Competition Act 2004 (No 46 of 2004), *Consumer Protection (Fair Trading) Act* (Cap 52A, 2004 Rev Ed) and Protection from Harassment Act 2014 (No 17 of 2014)). In certain types of litigation such as those relating to family law, Singapore courts have adopted a less adversarial approach and encouraged the mediation of disputes.

Where the provisions of the statute are concerned, the judge can interpret those provisions, but cannot change them. For instance, if the Employment Act states that the employee must not earn more than \$ 2,600, the judge cannot change the amount to \$ 3,500.

JUDICIAL PRECEDENT

Judicial Precedent is another source of law. This is also known as “Judge made law”. The decisions of the court when deciding cases are called precedents and courts are generally bound to follow precedent of higher courts. Precedents are also called case law.

An example to describe judicial precedent will be Fay v. Public Prosecutor case in 1994, concerned an American teenager, Michael Fay, who was arrested in 1994 in Singapore for vandalizing cars and stealing street signs. He pleaded guilty to two charges of vandalizing by spraying paint on a number of cars. On conviction by a subordinate court, he was sentenced to a total of four months’ imprisonment and six strokes of the cane. For the purposes of sentencing, other charges were taken into consideration, including 16 charges of vandalism involving paint. Fay appealed to the High Court against the sentences, arguing that:

- provision to section 3 of the Vandalism Act required the prosecution to prove beyond reasonable doubt the indelible quality of the paint used before caning could be imposed;*
- a probation order was appropriate in this case; and*
- the trial judge below should have ordered a pre-sentencing report with a view to ordering probation.*

The appeal was dismissed. The case generated intense media interest in the US, culminating in a formal request being made by the American government for the caning sentence not to be carried out. The request was rejected by the Singapore government on the basis that foreigners in Singapore could not be held to a different standard from citizens. However, a recommendation was made to the President to reduce the caning sentence from six strokes to four.

In short, the courts apply the doctrine of binding precedents or *stare decisis* in order to regulate which decisions may be departed from and which decisions must be followed. As a general rule, decisions of higher courts bind the lower courts in the same jurisdiction.

The court decisions from England and other Commonwealth jurisdictions are, on the other hand, not legally binding in Singapore.

Whether a court is bound by a previous judgement given by a court at the same level depends on the type of Court in question. At this regard is worth to be mentioned that Singapore's final appellate court, the Court of Appeal is not required to follow its own previous decisions and the decisions of predecessor courts such as the Supreme Court of the Straits Settlements¹ and the Judicial Committee of the Privy Council², and may depart from or overrule such decisions if it thinks fit.³ However, it will generally not do so without a strong reason. For instance:

on 11 July 1994, the Court handed down a practice statement declaring that it would regard itself free to depart from previous decisions of its own or of the Privy Council (the Court of Appeal became Singapore's final appellate court following the abolition of all appeals to the Privy Council with effect from 8 April 1994), stating that...

“... in any case where adherence to such prior decisions would cause injustice in a particular case or constrain the development of the law in conformity with the circumstances of Singapore. Therefore, whilst this court will continue to treat such prior decisions as normally binding, this court will, whenever it appears right to do so, depart from such prior decisions. Bearing in mind the danger of retrospectively disturbing contractual, proprietary and other legal rights, this power will be exercised sparingly...”

The Court justified this new principle on the basis that:

¹ When the British colony of the Straits Settlements – comprising Penang, Malacca and Singapore – was legally created in 1824, there existed only a Court of Judicature for Prince of Wales Island (Penang). The Court of Judicature was a single-level colonial court with no court of appeal. The only appeal was to the King-in-Council or Queen-in-Council.

In 1868, the Supreme Court abolished the Judicature of Prince of Wales' Island, Singapore and Malacca, replacing it with the Supreme Court of the Straits Settlements.

The court ceased to function when the Japanese invaded Singapore in 1942 and established a Military Court of Justice to administer Military Ordinances and the laws of the Japanese army.

Following the surrender of the Japanese on 12 September 1945, Singapore was temporarily administered by the British Military Administration. The British Military Administration proclaimed that all Japanese Proclamations and Decrees ceased to have effect, and that "all laws and customs existing immediately prior to the Japanese occupation will be respected. The British Military Administration came to an end on 31 March 1946. The Straits Settlements were disbanded and Singapore was made a separate Crown Colony on 1 April 1946. The Supreme Court, consisting of a High Court and a Court of Appeal, was constituted by the Singapore Colony Order in Council. .

² The Judicial Committee of the Privy Council (JCPC) is the highest court of appeal for certain British territories, some Commonwealth countries and a few UK bodies. Established on 13 August 1833 to hear appeals formerly heard by the King-in-Council, the Privy Council formerly acted as the court of last resort for the entire British Empire (other than for the United Kingdom itself), and continues to act as the highest court of appeal for several independent Commonwealth nations, the Crown Dependencies, and the British Overseas Territories.

³ The Court of Appeal is required, however, to abide by decisions of the Constitution of the Republic of Singapore Tribunal in certain situations. The Constitution of Singapore states that where the President has referred to the Tribunal a question concerning the Constitution's effect on a bill, no court – including the Court of Appeal – may subsequently question the Tribunal's opinion on the bill or, assuming the bill is found to be constitutional, the validity of any law based on the bill.

"... the political, social and economic circumstances of Singapore have changed enormously since Singapore became an independent and sovereign republic. The development of our law should reflect these changes and the fundamental values of Singapore society..."

However, even if the court in question is bound there are some exceptions allowing it to depart from previous decision. In fact, the lower court is able, in some cases, to avoid having to apply the *ratio decidendi* in a prior higher court's decision if it can distinguish the material facts of the case before the lower court from those in the prior case.

CUSTOMS

A custom is an established practice or course of behavior that is regarded by the persons engaged in the practice as law. Customs do not have the force of law unless they are recognized in a case. "Legal" or "trade" customs are not given recognition as law unless they are certain and not unreasonable or illegal. In Singapore, custom is a minor source of law as not many customs have been given judicial recognition.

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