

## OPENING ADDRESS

### SAL ANNUAL REVIEW CONFERENCE 2016

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The Honourable Justice Andrew Phang, Judge of Appeal, Supreme Court of  
Singapore

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Distinguished Guests

Ladies and Gentlemen

1 Singapore law has developed tremendously since independence half a century ago. Long tied to the apron strings of English law, it was – for the longest time prior to independence – viewed as being coterminous with English law. Indeed, the few local cases which then existed were often thought to be mere carbon copies, so to speak, of the corresponding English cases. However, that is no longer the situation now.

2 Since independence, there has been a gradual cutting of our legal apron strings. Once thought a mere ideal or pipe-dream, the indigenous or autochthonous development of Singapore law is now very much a reality. There has not only been an increase in the quantity of local decisions; there has also been a marked difference in the quality of those decisions as well. This development has been examined elsewhere and I need not say much about it save to mention the recently published book entitled *Singapore Law – 50 Years in the Making*<sup>1</sup>, which comprehensively traces this development through many different indicia. It is a fascinating read and one which I would commend to all present today.

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<sup>1</sup> See Goh Yihan and Paul Tan (gen eds), *Singapore Law – 50 Years in the Making* (Academy Publishing, 2015) (“*50 Years in the Making*”).

3 For present purposes, I want to focus on the institution of the *Singapore Academy of Law Annual Review of Singapore Cases* (or “the *Annual Review*”, as it is now commonly referred to) at the turn of the millennium. The first volume was published in the year 2000 and there have been annual volumes published ever since. In many ways, its publication represented the coming of age of Singapore law. Up to that particular point in time, the Singapore Academy of Law had held 5-yearly conferences, the proceedings of which were subsequently published in a separate volume of essays (the first volume was published in 1996, reviewing developments between 1990 and 1995). This was perhaps understandable in light of the fact that there were not that many Singapore decisions to begin with, and even fewer local decisions actually represented a departure from the received English law. However, by the time we reached the year 2000, there was not only a second volume of essays reviewing developments between 1996 and 2000,<sup>2</sup> there was – as I have just mentioned – also the very significant first volume of the *Annual Review*. It was a watershed in the development of Singapore law simply because there was now considered to be a *critical mass* of *Singapore cases* that merited an annual review.

4 As then Chief Justice Yong Pung How observed in the Foreword to the first edition of the *Annual Review*:<sup>3</sup>

In the last decade, we witnessed a sea change in the scene of the administration of justice. Not only have we cleared the large backlog of cases pending trial, the courts have also become very much more productive in terms of legal writings. This, in turn, brought about the emergence of a separate home-grown reporting series, the Singapore Law Reports (SLR). In the initial years, the SLR consisted of only two volumes. But with the increasing numbers of judgments and

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<sup>2</sup> There were two subsequent volumes, reviewing developments between 2001 and 2005 and between 2006 and 2011, respectively.

<sup>3</sup> Chief Justice Yong Pung How, *Singapore Academy of Law Annual Review of Singapore Cases 2000* at p i.

written grounds delivered by the courts, the SLR has expanded and is now in four volumes. However, even in its present form, the SLR has not been able to publish all the written judgments of the High Court and the Court of Appeal. Some judgments have remained unreported.

It is against this backdrop that I think this publication will be immensely useful to all who are involved in the law, particularly the busy practitioners. It covers both the reported and the unreported cases. It tells the reader in brief what has been decided in the previous year in a particular field and on how, if at all, it has affected existing law or on how existing law has been applied. It serves to update the reader on changes in the law as it evolved through the cases. It evaluates the judgments and places them in the relevant contexts and, where appropriate, offers comments. It will therefore enable everyone to keep abreast of developments in the law.

5 The *Annual Review* has since fulfilled these salutary functions for over a decade and a half, and its work has been critical. One reason for this is the sheer increase in the number of judgments issued by our courts. Indeed, from two volumes, the SLR itself has now grown to *five* volumes and even these volumes cannot capture all the decisions emanating from the Singapore courts. In 1992, the inaugural year of the SLR's publication, the two volumes of reports totalled slightly over two thousand pages. Last year, the five volumes of the SLR ran to over 6,500 pages. In a sense, this is a demographic inevitability.

6 But, as I mentioned in my introduction, more important than the increase in quantity of judgments is the development of a distinctively local stream of legal thought and jurisprudence. Singapore is no longer a slave to English law – although, in some instances, it has steadfastly defended the existing English law and refused to follow more recent English decisions.<sup>4</sup> On

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<sup>4</sup> See, eg, *MFM Restaurants Pte Ltd and another v Fish & Co Restaurants Pte Ltd and another appeal* [2011] 1 SLR 150, where the Singapore Court of Appeal declined to follow the lead of the English House of Lords in *Transfield Shipping Inc v Mercator Shipping Inc* [2009] 1 AC 61 in adopting the concept of an assumption of responsibility in the doctrine of remoteness of damage in contract law. Instead, it  
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other occasions, however, the Singapore courts have decided to develop its law differently from English law.<sup>5</sup> Underlying these developments is a unifying theme: put simply, it is that the Singapore courts are only concerned with what I have termed – adopting the title of Lord Goff of Chieveley’s justly famous Maccabean Lecture in Jurisprudence<sup>6</sup> - “the search for principle”.<sup>7</sup> Our courts have strived to develop the law by distilling the best legal principles available from all jurisdictions (including those outside Singapore and England). Indeed, a close analysis of the various cases will reveal that there has not been change solely for the sake of change. I should add that “the search for principle” does not constitute an end in itself – it assists the court concerned to achieve a substantively fair and just outcome in the case at hand, bearing in mind the fact that procedural fairness and justice is also an integral element of this quest.

7 Given recent developments, the *Annual Review* has now become an indispensable tool in both synthesising as well as analysing developments in specific areas of Singapore law in relation to the year in question. And more chapters have – not surprisingly – also been added over the years to the *Annual Review*.

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elected to retain the approach articulated in *Hadley v Baxendale* (1854) 9 Exch 341; 165 ER 145.

<sup>5</sup> See, eg, *Xpress Print Ltd v Monocrafts Pte Ltd and another* [2000] 2 SLR(R) 614, where the Singapore Court of Appeal departed from the long-established position set out in the decision of the English House of Lords in *Charles Dalton v Henry Angus* (1880–1881) 6 AC 740 that a right to support only extended to what was naturally on the land. Instead, it was held that a landowner owed his neighbor an absolute duty not to interfere with the right of support for his building

<sup>6</sup> See Robert Goff, “The Search for Principle” (1983) 69 Proceedings of the British Academy 169 (reprinted in William Swadling and Gareth Jones (Eds), *The Search for Principle – Essays in Honour of Lord Goff of Chieveley* (Oxford University Press, 1999), pp 313-329).

<sup>7</sup> See Andrew Phang, “Recent Developments in Singapore Contract Law – the Search for Principle” (2011) 28 JCL 3.

8 I would like to pause, at this juncture, to acknowledge the prodigious efforts of Professor Teo Keang Sood of the Faculty of Law of the National University of Singapore. He has been the General Editor of the *Annual Review* ever since its inception in the year 2000. He has been the pillar without which the *Annual Review* would not have been possible. His quiet efforts belie the enormous amount of work that constitute the foundation upon which this enormously valuable publication was built and without which it would not have been possible. As has been mentioned elsewhere (in a different, albeit related, context):<sup>8</sup>

There is the all too human tendency to ignore the foundation because it is not readily visible. Yet, a building is only as good and secure as its foundation.

9 And that foundation owes much to the efforts of Professor Teo as well as to the members of his team at the Singapore Academy of Law (including, amongst many others, Ms Hung Ning Shing and Ms Elizabeth Sheares). I would also like to note the recent appointment of Associate Professor Goh Yihan of the School of Law of the Singapore Management University as joint editor of the *Annual Review*.

10 A great debt of gratitude is also owed to the various members of the Publications Committee of the Singapore Academy of Law who have also helped to oversee this project over the years – first under the able leadership of Justice Chao Hick Tin and, presently, in the capable hands of Justice Judith Prakash.

11 The present Conference may be viewed as a yet further – and natural – development inasmuch as, given the enormous growth in the local case law just mentioned, it is useful for the expert writers in each field to give an

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<sup>8</sup> V K Rajah and Andrew Phang, in the Foreword to *50 Years in the Making* at p x (*supra*, note 1).

exposition of the developments in his or her area. In my view, the personal touch and interaction that results from such sessions assist in the assimilation of information with a level of efficiency and efficacy that is not possible with just individual study. I also hope that participants will engage with the various panellists in each session. From my own experience, an engaged audience not only makes the session concerned a more fulfilling one but can also (on occasion) spark more thoughts and ideas on the part of the author. In this way, the sessions are not merely one-way, top-down, occasions but are, instead, interactive sessions that benefit both speaker and participant alike.

12 Attending the sessions is, of course, no substitute for actually reading the detailed expositions in the actual chapters of the *Annual Review* itself but I appreciate that we live in an increasingly busy world. Hopefully, these sessions will whet the appetite of participants to follow-up on specific developments that are brought to their attention. I also view this Conference as furnishing overviews on areas of law which certain participants would not otherwise have followed-up on at all in the printed volume of the *Annual Review*. This is a not unimportant – albeit subsidiary – benefit of holding such a Conference.

13 I would like to take this opportunity to thank all the speakers not only for their participation in this Conference but also for taking the time and trouble to render their thoughts in a more permanent format in the pages of the *Annual Review* itself. Indeed, many of you have been doing this for a great many years and we are very grateful for the time and sacrifices you have made in disseminating your expertise to students as well as members of the legal profession. I would also like to thank the organising staff for all their efforts. They are the unsung heroes and heroines, without whom this Conference would not have been possible.

14 I wish all participants a very fruitful Conference. Thank you.