

THE INHERENT JURISDICTION AND INHERENT POWERS OF THE SINGAPORE COURTS: RETHINKING THE LIMITS OF THEIR EXERCISE

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The issue of the limits of the courts' inherent jurisdiction and inherent powers has always been an important one. For a long time the courts have been satisfied with broad tests based on "need" or the "justice of the case" to set such limits. These tests are highly useful by being flexible, but that flexibility is also a source of uncertainty. This article suggests a new way of understanding the limits of the Singapore courts' inherent jurisdiction and inherent powers. It does this with a three-step approach. First, it argues for a new approach towards terminology and explains why this is important. From a study of all reported Singapore cases between independence and mid-2010 that contain the expression "inherent jurisdiction" or "inherent power(s)", it will be seen that the Singapore courts have meant different things even when the same expression is being used. It is thus necessary to be clear about what is actually meant by the expressions "inherent jurisdiction" and "inherent power(s)". Second, utilising the suggested approach towards terminology, this article shows that it is possible to separate three distinct categories of the courts' inherent jurisdiction and inherent powers. Third, and finally, this article argues that the limits to be placed on each category ought to be distinct. Thus, a test based on "need" or "justice of the case" may be more strictly (or liberally) applied in one category than in another. The underlying consideration is that of legislative exclusion; and, where this is not express, it may be possible to imply this based on a sliding scale according to the three categories of inherent jurisdiction and inherent powers suggested in this article.

I. INTRODUCTION

The issue of the limits on the courts' inherent jurisdiction and/or inherent powers is an important one. For a long time, the courts have used different tests to limit the exercise of their inherent jurisdiction and/or inherent power. Thus they have spoken of the key criterion of "need", the necessity that "justice be done", or the prevention of "injustice" or "abuse of process".¹ These tests reflect worthy concerns and are not substantively objectionable, and this article will not justify *why* such limits should

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¹ *Wellmix Organics (International) Pte Ltd v. Lau Yu Man* [2006] 2 S.L.R.(R.) 117 (C.A.) [*Wellmix Organics*] at para. 81.

be there.² The concern is instead with defining those limits. The need to do so was recently emphasised by the Singapore High Court in *Management Corporation Strata Title Plan No. 301 v. Lee Tat Development Pte Ltd*.³ In that case, the court warned that the expression “inherent power” should not be used “as though it were the joker in a pack of cards, possessed of no specific designation and used only when one did not have the specific card required”.⁴ But the concern with limits can only be addressed after answering an even more fundamental question: “*What is it that we are concerned with placing limits on?*”. One of the presuppositions behind the existing tests on limits is that the tests apply *equally* to control the courts’ inherent jurisdiction or inherent power, which has hitherto been assumed to be a blanket concept.

This article will challenge that presupposition and suggest an alternative way to understand the limits of the inherent jurisdiction and inherent power of the Singapore courts.⁵ Broadly, it is hoped that this alternative approach will go some way to demystifying a subject which has been shrouded in confusion and uncertainty. More specifically, the suggestion of an alternative approach towards delimiting the courts’ inherent jurisdiction and inherent powers will ensure consistency and certainty across the cases.

II. THE DIFFERENT MEANINGS OF “INHERENT JURISDICTION” AND “INHERENT POWER” IN THE SINGAPORE COURTS

A. “*Inherent Jurisdiction*” and “*Inherent Power*” in the Singapore Courts

As at July 2010, there have been 217 reported Singapore decisions containing the expression “inherent jurisdiction”.⁶ Another 78 contain the expression “inherent power(s)”. Accounting for duplication, there are 254 unique decisions that contain

² As Joan Donnelly has suggested, the need for limits may be because the concept of a court possessing “inherent jurisdiction” is unsettling to a lawyer educated in a constitutional tradition founded on the separation of powers and the supremacy of Parliament. Another need for limits may be the jurisdiction’s apparently limitless character, which invites the prospect of judges, if unconstrained by the pull of precedent, invoking the jurisdiction to justify all decision-making. See Joan Donnelly, “Inherent Jurisdiction and Inherent Powers of the Irish Courts” (2009) 2 *Judicial Studies Institute Journal* 122 at 123. The need for limits is also acknowledged by the courts’ self-imposition of tests to achieve such limits. Indeed, it has been said in *Wellmix Organics*, *supra* note 1 at para. 81, that “[i]t is commonsensical that O. 92 r. 4 [of the Rules of Court which points to the courts’ inherent powers] was not intended to allow the courts *carte blanche* to devise any procedural remedy they think fit. That would be the very antithesis of what the rule is intended to achieve.”

³ [2010] 1 S.L.R. 645 (H.C.) [*Lee Tat Development*], result upheld on appeal in *Management Corporation Strata Title Plan No 301 v. Lee Tat Development Pte Ltd* [2010] SGCA 39 [*Lee Tat Development (CA)*].

⁴ *Lee Tat Development*, *ibid.* at para. 9.

⁵ Hopefully this is not an over-ambitious endeavour, for no less than the Court of Appeal has proclaimed that “... [n]either is it possible to lay down any comprehensive test as to its exercise [of the courts’ inherent jurisdiction]”. See *Samsung Corp v. Chinese Chamber Realty Pte Ltd* [2004] 1 S.L.R.(R.) 382 (C.A.) [*Samsung Corp (CA)*] at para. 15.

⁶ In one case, the expression actually appears in the headnotes but not in the judgment itself: *Brown Noel Trading Pte Ltd v. Singapore Press Holdings Ltd* [1993] 2 S.L.R.(R.) 715 (H.C.) [*Brown Noel*].

the expression “inherent jurisdiction” or “inherent power(s)”.⁷ This translates to slightly more than 5 decisions a year in which the courts have mentioned either phrase in a written judgment. Of course, this account does not consider the (presumably) many other unreported decisions in which the courts considered, or indeed exercised, either their inherent jurisdiction or inherent power. Out of the 254 unique decisions, a good number do not actually claim, exercise or discuss any inherent jurisdiction or inherent power.⁸ Not counting these decisions, we are left with 138 reported cases in which the Singapore courts have discussed, explicitly or implicitly,⁹ their “inherent jurisdiction” or “inherent power(s)” to do something. While the common view is that matters of inherent jurisdiction or inherent power only arise in civil procedure cases, the truth is that these cases cover a far greater variety of legal topics.¹⁰ Such variance may signal the importance of the courts’ inherent jurisdiction and inherent power beyond the narrow “procedural” confines for which they are commonly known. Out of these 138 cases, the courts in 123 have claimed the “inherent jurisdiction” to do something. On the other hand, only in 15 of these cases have the courts said that they have the “inherent power(s)” to do something.¹¹ The first challenge is to make sense of these numbers, which are represented both graphically and tabularly in Chart 1 and Table 1, respectively.

B. Different Meanings in the Cases

Although an influential article has defined “inherent jurisdiction” to mean those inherent powers of the court to act to protect its own processes,¹² this definition arguably conflates the distinct concepts of “jurisdiction” and “power”.¹³ It will be seen that the Singapore courts have meant different things even when the same expression is being used. It is thus necessary to be clear what is actually meant by the expressions “inherent jurisdiction” and “inherent power(s)”.

⁷ Although perhaps not courts, as the Malaysian Federal Court continued to be our (domestic) apex court for some time after Singapore’s *national* independence, and until a decade ago the Privy Council was formally our apex court.

⁸ In those decisions, the court had either made a fleeting reference to counsel’s argument regarding inherent jurisdiction or inherent power without dealing with it, or had quoted an external passage containing either expression, but without discussing either substantively.

⁹ A claim to “inherent jurisdiction” is considered “implicit” if, for example, the court recites counsel’s prayer which includes a reference to the court exercising its “inherent jurisdiction”. If the court takes cognisance of the prayer, then whether or not the court actually grants the order, its claim to the “inherent jurisdiction” (in whatever sense) is assumed.

¹⁰ See Chart 1, below.

¹¹ See Table 1, below.

¹² Jack Jacob, “The Inherent Jurisdiction of the Court” (1970) C.L.P. 23 at 51.

¹³ Donnelly, *supra* note 2 at 125. Locally, this is not a novel proposition. Indeed, the leading academic writing on the subject by Jeffrey Pinsler on the subject implicitly (or even expressly) acknowledges that there ought to be a distinction between “inherent jurisdiction” and “inherent power(s)”. This may be why the learned author, when writing in the narrower context of the Singapore courts’ powers in civil procedure, chose to use the expression “inherent power” very carefully in his article. See Jeffrey Pinsler, “The Inherent Powers of the Court” [1997] Sing. J.L.S. 1. Likewise, Leong Wai Kum makes the same careful distinction in “The High Court’s Inherent Power to Grant Declarations of Marital Status” [1991] Sing. J.L.S. 13.

Breakdown of Cases by Subject Matter

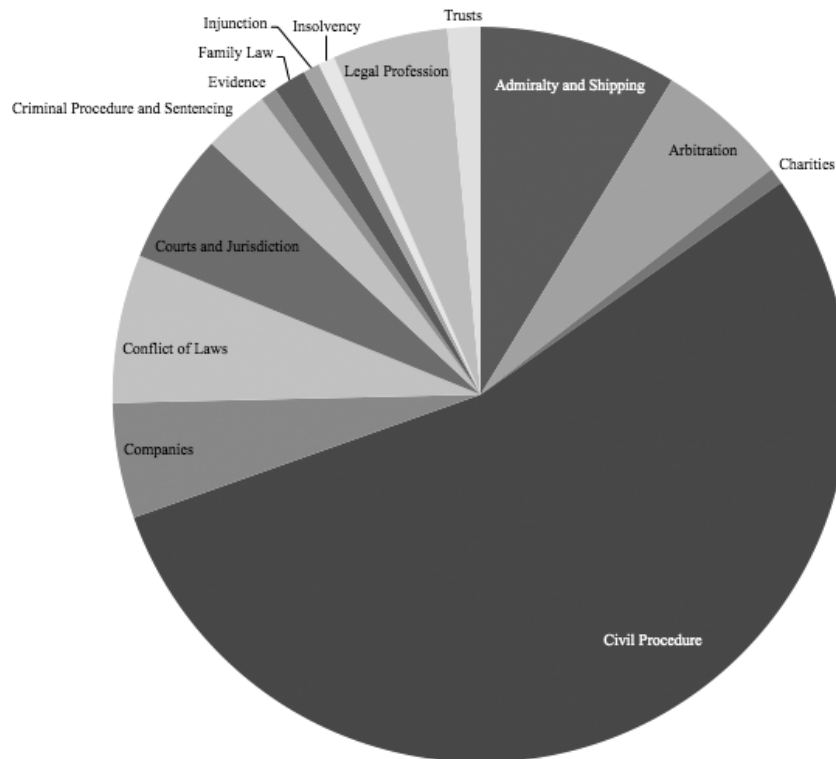


Chart 1. Breakdown of Cases Dealing with “Inherent Jurisdiction” and/or “Inherent Powers” by Subject Matter.

Table 1.
Breakdown of all cases

	Claimed “inherent jurisdiction” to do something	Claimed “inherent power(s)” to do something
Court of Appeal ¹⁴	45	3
High Court	78	12
Total Number of Cases	123	15

1. “Jurisdiction” and “Power” as Separate Concepts

The word “jurisdiction” presents several difficulties because of its numerous meanings. Indeed, Lord Bridge of Harwich remarked in *In re McC. (A Minor)*¹⁵ that

¹⁴ This includes the Malaysian Federal Court.

¹⁵ [1985] 1 A.C. 528 (H.L.).

few words have been “used with so many different shades of meaning in different contexts or have so freely acquired new meanings with the development of the law as the word jurisdiction”.¹⁶ Whilst that may be true, it does not necessarily mean that we cannot seek a more definitive meaning of “jurisdiction” instead of being satisfied with its many amorphous meanings,¹⁷ if only in the limited topic of “inherent jurisdiction”. It will be suggested that “jurisdiction”, as used in the expression “inherent jurisdiction”, has a specific meaning, which is to be distinguished from the meaning of the expression “inherent power(s)”.

“Jurisdiction”, translated from Latin, refers to “the power to speak the law”.¹⁸ A succinct definition of “jurisdiction” is “the authority which a Court has to decide matters that are litigated before it or take cognisance of matters presented in a formal way for its decision”.¹⁹ On the other hand, a court’s “power” has been described as “an entitlement in law to use a procedural tool... to hear and decide a cause of action in the Court within jurisdiction”.²⁰ Such power has likewise been described as “ancillary” and “enabl[ing] a court to give effect to its jurisdiction, by enabling the court to regulate its procedure and protect its proceedings”.²¹ These are widely accepted definitions, not only in academic literature but also in case law. These definitions illustrate not only that “jurisdiction” and “power” are separate concepts, but also that the exercise of “power” is dependent on there being “jurisdiction” in the first place. Thus, it has been said that the existence of power is “parasitic” on the court first possessing jurisdiction.²²

This distinction between “jurisdiction” and “power” is also recognised in the local case law.²³ In the High Court case of *Muhd Munir v. Noor Hidah*,²⁴ Chan Sek Keong J. (as he then was) adopting Thomson C.J.’s reasoning in the Malaysian case of *Lee Lee Cheng v. Seow Peng Kwang*,²⁵ held:²⁶

The jurisdiction of a court is its authority, however derived, to hear and determine a dispute that is brought before it. The powers of a court constitute its capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute. The jurisdiction and powers of the High

¹⁶ *Ibid.* at 536.

¹⁷ See Yeo Tiong Min, “Jurisdiction of the Singapore Courts” in Kevin Y.L. Tan, ed., *Singapore Legal System*, 2nd ed. (Singapore: Singapore University Press, 1999) 249 for an excellent overview of the various meanings of the word “jurisdiction” in the Singapore context.

¹⁸ Philip Austin Joseph, *Constitutional and Administrative Law in New Zealand*, 3rd ed. (Wellington: Brooker’s, 2007) at 807. See also Yeo, *ibid.* at 126.

¹⁹ Sir Robin Cooke, ed., *The Laws of New Zealand* (Butterworths, 1992) at ‘7 Courts’.

²⁰ *Axiom Rolle PRP Valuation Services Ltd. v. Rahul Ramesh Kapadia*, N.Z.A.C. 43/06 at para. 24.

²¹ Rosara Joseph, “Inherent Jurisdiction and Inherent Powers in New Zealand” (2005) 11 *Canterbury L.R.* 220 at 221. See also *Zaoui v. Attorney General* [2005] 1 N.Z.L.R. 666 (N.Z.H.C.) at para. 35.

²² Joseph, *ibid.* at 221.

²³ This is interesting given the apparent conflation of the terms when the word “inherent” is affixed to them.

²⁴ [1990] 2 S.L.R.(R.) 348 (H.C.) [*Muhd Munir*].

²⁵ [1960] 1 M.L.J. 1 (C.A.).

²⁶ *Muhd Munir*, *supra* note 24 at para. 19 [emphasis added]. See also the High Court case of *Lee Kim Cheong v. Lee Johnson* [1992] 2 S.L.R.(R.) 688 (H.C.) at para. 22, in which Michael Hwang J.C. warned that judges and parliamentary drafters have from time to time used the term “jurisdiction” to mean both (a) the authority of a court or judge to entertain an action or other proceeding; as well as (b) the power of the court to grant the particular kind of relief sought. This was referred to recently by the Singapore District Court in *The Redwood Tree Pte Ltd v. CPL Trading Pte Ltd* [2009] SGDC 204.

Court are statutorily derived. Whether it has any common law jurisdiction or powers is a question which is not relevant here. A court may have jurisdiction to hear and determine a dispute in relation to a subject matter but no power to grant a remedy or make a certain order because it has not been granted such power, whereas if a court has the power to grant a remedy or make a certain order, it can only exercise that power in a subject matter in which it has jurisdiction. The distinction between jurisdiction and power is recognised in the SCJA, ss 16 and 17 (which confer jurisdiction) and s 18 (which confers powers).

The formulation in *Muhd Munir* has since been referred to with approval in the Court of Appeal case of *Salijah bte Ab Latef v. Mohd Irwan bin Abdullah Teo*.²⁷ In that case, the court expressly recognised the possibility of confusing jurisdiction and power,²⁸ and said that jurisdiction is a “precondition” of the lawful exercise of a particular power.²⁹ Implicit in these statements is the recognition that “jurisdiction” and “power” have different meanings.³⁰ These meanings—termed the “authority meaning” and the “power meaning” respectively—can be found in the cases that use the expressions “inherent jurisdiction” and/or “inherent power(s)”, albeit not consistently.

2. “Inherent Jurisdiction” as “Power”

Indeed, the vast majority of cases have taken “inherent jurisdiction” to mean “power”.³¹ In *UMCI Ltd v. Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd*,³² there was an application for the production of certain documents under O. 24 r. 6(2) of the *Rules of Court 2006*³³ and/or the “inherent jurisdiction” of the court.³⁴ It was in this context that the court stated that the powers of the courts to manage and regulate civil cases are complemented by their “inherent jurisdiction”,³⁵ which it in turn defined as “an amorphous source of *power* to do that which is deemed appropriate

²⁷ [1996] 2 S.L.R.(R.) 80 (C.A.) [*Salijah bte Ab Latef*] at paras. 38 and 39.

²⁸ *Ibid.* at para. 37.

²⁹ *Ibid.* at para. 39.

³⁰ See also *Lehman Brothers Special Financing Inc v. Hartadi Angkosubroto* [1998] 3 S.L.R.(R.) 664 (H.C.) at paras. 24 and 25:

There can be no doubt that the court in Singapore has jurisdiction to try this action. Section 16(1)(a)(i) of the Supreme Court of Judicature Act confers jurisdiction on the High Court to hear and try any action *in personam* where the defendant is served with a writ in Singapore in the manner prescribed by Rules of Court. The defendant has entered an appearance *gratis* and by virtue of O 10 r 1(3), is deemed to have been duly served with the writ. Alternatively, by the defendant’s solicitors having agreed to accept service of the writ on behalf of the defendant, the writ has been duly served through a consensual mode of personal service pursuant to O 62 r 3(2).

Although the High Court undoubtedly has jurisdiction to try this action, para 9 of the First Schedule to the Supreme Court of Judicature Act confers on it the power to dismiss or to stay proceedings where Singapore is not the appropriate forum.

³¹ *I.e.*, power exercised in a matter that the court *already* has the authority to hear.

³² [2006] 4 S.L.R.(R.) 95 (H.C.) [*UMCI Ltd*]. See also *Public Prosecutor v. Louis Pius Gilbert* [2003] 3 S.L.R.(R.) 418 (C.A.) [*Louis Pius Gilbert*].

³³ (Cap. 322, R 5, 2006 Rev. Ed. Sing.) [2006 Rules].

³⁴ *UMCI Ltd*, *supra* note 32 at para. 1.

³⁵ *Ibid.*

in the circumstances to secure the ends of justice”.³⁶ In addition, when discussing its “inherent jurisdiction”, the court cited a passage from the case of *Wellmix Organics* that referred to the court’s “inherent powers”.³⁷ These make it clear that the court used “inherent jurisdiction” to refer to “power” since it was deciding whether it had the power to compel production in a case which it already had authority to hear.

3. “Inherent Jurisdiction” as “Authority”

In another line of cases, the courts have used “inherent jurisdiction” to refer to their authority to hear and determine a matter in the first place. In *Koh Zhan Quan Tony v. Public Prosecutor*,³⁸ the Court of Appeal had to confront the question of whether it had the jurisdiction to consider if the lower court had had the jurisdiction to entertain the appeal.³⁹ In deciding the question, the court considered whether it could rely on s. 29A of the *Supreme Court of Judicature Act 1999*,⁴⁰ or its “inherent jurisdiction” to rule on its own jurisdiction. The court eventually relied on s. 29A to find that it had indeed had jurisdiction to hear the application. It reasoned that the application involved an issue of jurisdiction to hear the earlier appeal by the Prosecution in the first place. While noting that this issue of jurisdiction ought to have been raised and considered during the hearing of the earlier appeal, the court held that there was “no reason in principle why [it] should be precluded from considering applications which could clearly have been argued and heard as a preliminary point of law during the hearing of the actual appeal...”⁴¹ Although the court declined to rest its reasoning on its “inherent jurisdiction”, it is clear, given the context, that the court treated “inherent jurisdiction” as meaning its authority to hear the application in the first place. Two reasons may be given in support of such an interpretation. First, the court had earlier carefully distinguished between the concepts of “jurisdiction” and “power”, holding that “jurisdiction” bore the meaning of “authority”.⁴² Thus the court was clearly aware of the distinction between “jurisdiction” and “power”. It makes no sense for that distinction (or awareness of that distinction) to be dismissed when the word “inherent” is affixed before “jurisdiction”. Secondly, the question before the court was one of “jurisdiction” in the “authority” sense. Thus when the court considered its “inherent jurisdiction”, it must have regarded this expression as meaning “authority”.⁴³

4. “Inherent Power(s)” as “Power”

As with the expression “inherent jurisdiction”, the Singapore courts have taken the expression “inherent power(s)” to mean either “power” or “authority”. One case in which “inherent power” was taken to mean “power” is the High Court case of *Re*

³⁶ *Ibid.* [emphasis added].

³⁷ *Ibid.* at para. 89.

³⁸ [2006] 2 S.L.R.(R.) 830 (C.A.) [*Tony Koh*].

³⁹ *Ibid.* at para. 29.

⁴⁰ *Supreme Court of Judicature Act* (Cap. 322, 1999 Rev. Ed. Sing.) [SCJA 1999].

⁴¹ *Tony Koh*, *supra* note 38 at para. 19.

⁴² *Ibid.* at para. 13.

⁴³ Another, more recent, example is *Bachoo Mohan Singh v. Public Prosecutor* [2009] 3 S.L.R.(R.) 1037 (H.C.) [*Bachoo Mohan Singh*].

ABZ (An Infant),⁴⁴ which concerned the High Court's power to set aside an adoption order. Counsel for the applicant submitted that the court had the "inherent power" under O. 92 r. 4 of the *Rules of the Supreme Court 1970*⁴⁵ to grant the application.⁴⁶ Declining to make any order as to the application, the court held that, generally, courts do not have the *power* to set aside an adoption order save, perhaps, in circumstances where the original court had no jurisdiction to make the order, or where it was made under a false representation or mistaken identity as to the child to be adopted.⁴⁷ The court drew a clear distinction between "power" and "jurisdiction", with the latter meaning the authority of the court to even hear the application.⁴⁸

5. "Inherent Power(s)" as "Authority"

Fewer cases have attributed the "authority" meaning to the expression "inherent power(s)". In *Les Placements Germain Gauthier Inc v. Hong Pian Tee*,⁴⁹ the High Court was concerned with the statutory rule under the *SCJA 1999* that there could be no appeal against a judge's decision granting unconditional leave to defend.⁵⁰ The court accepted that there was "no exception to that provision",⁵¹ and that the court could not "even invoke any inherent powers of the court in aid".⁵² The usage of "inherent powers" in the context of whether the court had the *authority* to hear the particular appeal suggests that the court intended the expression to mean "authority". A similar case is the High Court decision of *Hongkong and Shanghai Banking Corp v. Goh Su Liat*.⁵³ The plaintiff had obtained a judgment debt against the defendant. It then applied to garnish the salary of the defendant, and obtained a garnishee order absolute to that effect against the defendant's employer. The defendant applied to set aside the order on the basis that the salary garnished had not accrued to him on the day of the garnishee order to show cause. Counsel for the plaintiff argued that it was doubtful that the defendant could dispute the order when his employer, the garnishee, had not. The court rejected this argument and ruled that the defendant, being the judgment debtor, had a right to apply to the court to set aside the garnishee order to show cause and the garnishee order absolute. While the court reasoned in the main under O. 49 r. 3(1) of the *1970 Rules*, it also referred to O. 92 r. 4 of the *1970 Rules* to hold that it could hear the judgment debtor's application "under its inherent powers and make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court".⁵⁴ As with *Les Placements*, the court here specifically linked its "inherent powers" to its ability to hear an application in the first place.

⁴⁴ [1992] 1 S.L.R.(R.) 275 (H.C.) [*Re ABZ*].

⁴⁵ Cap. 15, R 5, 1970 Rev. Ed. Sing. [*1970 Rules*].

⁴⁶ *Re ABZ*, *supra* note 44 at para. 6.

⁴⁷ *Ibid.* at para. 7.

⁴⁸ *Ibid.* at paras. 8-10.

⁴⁹ [2001] 2 S.L.R.(R.) 530 (H.C.) [*Les Placements*].

⁵⁰ This was in response to counsel's argument that the effect of the judge's order "setting aside/reversing" the assistant registrar's order granting summary judgment is that the defendant must have been given unconditional leave to defend since in setting aside the order no conditions were imposed. See *Les Placements*, *ibid.* at para. 12.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ [1985-1986] 1 S.L.R.(R.) 430 (H.C.) [*Goh Su Liat*].

⁵⁴ *Ibid.* at para. 8.

6. Relationship Between “Inherent Jurisdiction” and “Inherent Power”

Thus, the Singapore courts have attributed either the meaning of “power” or “authority” to either “inherent jurisdiction” or “inherent power(s)”. There is therefore no consistent concept referred to when the courts speak of their inherent jurisdiction or inherent power(s). There is, however, a further dimension to the definition problem. In some instances, the courts have referred to *both* these expressions *in the same case*. There are three possibilities.

(a) *Both expressions mean “power”*: The first possibility is when the courts have held, implicitly or otherwise, that both expressions mean its power to hear a matter. *Lee Tat Development* is an example of this first possibility *as well as* a second possibility (to be discussed below). In that case, the High Court had to deal with the plaintiff’s application for a declaration of the Court of Appeal’s statutory and inherent jurisdictions to re-open and set aside its own previous decision. Thus the issue confronting the court was one of authority. It might seem at first that the court drew a clear distinction between “jurisdiction” and “power” when it said “however wide the court’s inherent powers might be, they would have no application when the court’s jurisdiction has ended and its judgment delivered”.⁵⁵ However, the court then referred to the High Court decision of *Godfrey Gerald QC v. UBS AG*⁵⁶ and said that the court in that case held that “the court’s inherent power after it becomes *functus officio* consisted of ‘a residual inherent jurisdiction even after an order is pronounced to clarify the terms of the order and/or to give consequential directions’—nothing more.”⁵⁷ With respect, there are two inaccuracies in this statement. The first is that the High Court in *Godfrey Gerald QC* never used the expression “inherent power” in its judgment at all. It had, instead, consistently used the expression “inherent jurisdiction” in the same case.⁵⁸ It is clear that the High Court in *Lee Tat Development*, in using “inherent power” to describe what the High Court in *Godfrey Gerald QC* had referred to as the court’s “inherent jurisdiction”, treated the two expressions as the same thing. Therein lies the second inaccuracy: the court evidently thought that both expressions meant “power”, contrary to the argument made in this article. This is because “inherent jurisdiction” as used by the High Court in *Godfrey Gerald QC* referred to the court’s power to clarify the terms of the order and/or to give consequential directions. It had nothing to do with the court’s authority to hear a matter in the first place, a definition which the High Court in *Lee Tat Development* implicitly accepted when it drew a distinction between jurisdiction and power.⁵⁹

(b) *Both expressions mean “authority”*: *Lee Tat Development* stands also as an example of a case in which both “inherent jurisdiction” and “inherent power(s)” were treated as meaning “authority”. Referring to the argument by counsel for the

⁵⁵ *Lee Tat Development*, *supra* note 3 at para. 8.

⁵⁶ [2004] 4 S.L.R.(R.) 411 (H.C.) [*Godfrey Gerald QC*].

⁵⁷ *Lee Tat Development*, *supra* note 55.

⁵⁸ Let us leave aside, for the moment at least, the issue of whether the High Court had in *Godfrey Gerald QC* attributed a preferable meaning to “inherent jurisdiction”.

⁵⁹ In *Lee Tat Development (CA)*, *supra* note 3, the Court of Appeal used the expression “inherent jurisdiction” consistently. See *e.g.*, *Lee Tat Development (CA)*, *supra* note 3 at para. 55. A similar example is the Court of Appeal decision of *Samsung Corp (CA)*, *supra* note 5.

plaintiff on why the Court of Appeal had the jurisdiction to reopen an appeal, the court first stated that:⁶⁰

The *inherent powers* that [the applicant] wants to urge the Court of Appeal to exercise were much wider, and similar to that in *Taylor v Lawrence* and *R v Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte* where the respective courts held that even after final judgment had been delivered the court had an inherent power to reopen the case.

After discussing why the two English cases were not applicable in the Singaporean context, the court then said, in the very same paragraph:⁶¹

Thus it seems to [the court] that the ground for invoking the *inherent jurisdiction* of the court to rehear a substantive matter that was otherwise *res judicata* was one founded on the overriding need to uphold public confidence in the judiciary and the administration of justice.

In a short space, the court had used the expressions “inherent powers” and “inherent jurisdiction” just to describe the authority of the court to hear an appeal again, given the context of the case and counsel’s arguments. Indeed, two paragraphs later, the court discussed the Court of Appeal’s “jurisdiction and power” under s. 29A of the *Supreme Court of Judicature Act 2007*,⁶² and asked whether the Court of Appeal could arrogate to itself “inherent powers” since, strictly, Parliament had not reserved that power which it could have done very simply.⁶³ Again, given the context, it is clear that the court meant to refer to the Court of Appeal’s authority to hear a matter which, in this instance, was a “re-appeal”. This was a clear example in which the court had attributed the same meaning of “authority” to both expressions.

(c) *Inherent jurisdiction as “authority” to invoke inherent power(s)*: Some courts have sought to link the two expressions as being different but related concepts. *Lee Kuan Yew v. Tang Liang Hong*⁶⁴ was a case which suggested that there was an “inherent jurisdiction” to invoke the court’s “inherent power(s)”. This retained the “authority” and “power” meanings to the two expressions respectively. In that case, the High Court had granted an application to delete certain paragraphs from the pleadings on, amongst others, the ground that there had been an abuse of the court process and that it was just and convenient to maintain friendly ties with Malaysia. On appeal, the Court of Appeal had some doubts as to whether this was an appropriate case “to invoke the inherent jurisdiction of the court and its corresponding inherent powers to make an order of deletion so as ‘to prevent injustice or to prevent an abuse of the process of the court’”.⁶⁵ While the Court of Appeal declined to express any firm opinion on the matter as the present application did not raise this issue substantively, the way the court presented the argument suggests that it had linked the two expressions in the way earlier proposed. However, this really is a power to invoke a power, and the two collapse into a single inherent power.

⁶⁰ *Lee Tat Development*, *supra* note 3 at para. 9.

⁶¹ *Ibid.* [emphasis added].

⁶² Cap. 322, 2007 Rev. Ed. Sing.

⁶³ *Lee Tat Development*, *supra* note 3 at para. 11.

⁶⁴ [1997] 2 S.L.R.(R.) 862 (C.A.).

⁶⁵ *Ibid.* at para. 17.

C. *Summary of the Findings as to What the Courts Mean by “Inherent Jurisdiction” and “Inherent Power”*

The foregoing exercise demonstrates the potential uncertainties brought about by the Singapore courts’ use of the expressions “inherent jurisdiction” and “inherent power(s)” interchangeably to mean different things at different (and even identical) times. Accepting that a court can either mean “authority” or “power” (as earlier defined) when using either expression, the various definitional possibilities are perhaps best summed up by way of a table.

Table 2.
Breakdown of the meanings attributed to the two expressions by the courts.

	“Authority” meaning	“Power” meaning
Said “inherent jurisdiction”	13	110
Said “inherent power(s)”	3	12
Total number of cases	16	122

There is quite clearly a substantive problem. The problem would have been a merely terminological one had the courts used one expression to mean something else *consistently*. The reality, however, is that the courts have used the two expressions interchangeably to mean different things, sometimes in the same case. While Jacob has described the courts’ inherent jurisdiction as “amorphous and ubiquitous”,⁶⁶ this surely does not extend to the conflation of several concepts within a mix of expressions. Untangling and differentiating the meanings used by the courts is not merely about resolving a semantic problem; there are consequences beyond whether the usage of each expression is elegantly consistent across the cases. One such consequence concerns the problem of limits. The problem of limits is an important one, for if it is unclear what we are concerned about limiting, how do we decide what the limits should be? For now, if it is accepted that there is inconsistency in the courts’ use of the two expressions, this article submits that one possible way forward is to adopt the “authority” meaning for “inherent jurisdiction”, and the “power” meaning for “inherent power(s)”.⁶⁷ The distinction between “jurisdiction” and “power” is a widely accepted one in the local case law. The addition of the word “inherent”—which concerns the *source* of the jurisdiction or power—should not affect this substantive distinction.

III. THE INHERENT JURISDICTION OF THE SINGAPORE COURTS

Adopting the definition that “inherent jurisdiction” refers to the inherent authority of the court to hear a matter, this article now categorises the instances which the

⁶⁶ Jacob, *supra* note 13.

⁶⁷ It could even be the other way around so long as we are *consistent* in the usage.

Singapore courts (*i.e.*, the High Court, the Court of Appeal, or both) have claimed such an inherent jurisdiction.⁶⁸

A. *Categories of Inherent Jurisdiction of the High Court*

1. *Inherent Jurisdiction to Hear an Application Being Brought for a Declaration*

The High Court in *Re LP (adult patient: medical treatment)*⁶⁹ held that it had the inherent jurisdiction to hear an application for a declaration whether any other kind of relief was asked for or available.⁷⁰ In that case, LP, a patient, had slipped into a comatose state as a result of septic shock caused by infection in both her legs. Before she became unconscious, she told her doctor to “save her legs at all costs”. However, she was not told that she could die from the infection if her legs were not amputated. The situation was urgent and there was insufficient time to appoint a third party as a Committee of Person under the *Mental Disorders and Treatment Act*⁷¹ to give consent on LP’s behalf. Her doctors therefore made an *ex parte* application for a declaration that treatment on the patient was legal given that the patient or a representative was unable to consent.⁷² Counsel had submitted that the court had “powers” under O. 15 r. 16⁷³ of the *Rules of Court 2004*,⁷⁴ as well as under its inherent jurisdiction to hear an application of this nature. It is understandable why counsel sought to invoke the “inherent jurisdiction” of the High Court, since ss. 16 and 17 of the *SCJA 1999* do not deal with the High Court’s jurisdiction to hear such an application. While s. 16(2) of the *SCJA 1999* stated that the High Court shall have such jurisdiction as is vested in it by any other written law, the *MDTA* did not confer any jurisdiction on the court in the circumstances as LP was neither “mentally disordered” under the terms of the Act,⁷⁵ nor was any third party appointed to consent on her behalf. Thus, statutorily at least, the court had no jurisdiction to hear the application. In resolving the issue of jurisdiction, the court preferred to rest its authority to hear the application on its “inherent jurisdiction”. It agreed with Lord Brandon in *In re F*,⁷⁶ that, whether any other kind of relief is asked for, O. 15 r. 16 merely provided that there was no procedural objection to an action being brought for a declaration.⁷⁷ It therefore held that the authority to hear the application concerned is part of the “inherent jurisdiction of the High Court”.⁷⁸

⁶⁸ This part of the article, being a consolidating exercise, does not evaluate the correctness of these claims, although it hopefully sets the stage for such future evaluation.

⁶⁹ [2006] 2 S.L.R.(R.) 13 (H.C.) [*Re LP*].

⁷⁰ *Ibid.* at para. 4.

⁷¹ *Mental Disorders and Treatment Act* (Cap. 178, 1985 Rev. Ed. Sing.) [*MDTA*].

⁷² *Re LP*, *supra* note 69 at para 6.

⁷³ This provided as follows:

No action or other proceeding shall be open to objection on the ground that a mere declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

⁷⁴ Cap. 322, R. 5, 2004 Rev. Ed. Sing.

⁷⁵ *Re LP*, *supra* note 69 at para. 4.

⁷⁶ [1990] 2 A.C. 1 (H.L.).

⁷⁷ *Re LP*, *supra* note 69 at para. 5.

⁷⁸ *Ibid.*

The court seemed concerned that if it were otherwise, the common law would be “seriously defective”.⁷⁹

2. *Inherent Jurisdiction to Hear Judgment Debtor’s Application to Set Aside Garnishee Orders*

In *Goh Su Liat*, the High Court held that it had the inherent jurisdiction to hear a judgment debtor’s application to the court to set aside the garnishee order to show cause and the garnishee order absolute even when the garnishee did not dispute the order.⁸⁰

3. *Inherent Jurisdiction to Hear an Application to Discharge or Vary an Injunction Even After a Full Inter Partes Hearing*

In *AAR v. AAS*,⁸¹ the High Court considered that it had the inherent jurisdiction to entertain an application to discharge an injunction or vary it, even following a full *inter partes* hearing. However, the matter was not fully considered by the court, as it was not the main issue before it. The case concerned an application for a further variation of an order of court granting an injunction. In dismissing the application, the court expressly agreed⁸² with the remarks of Simon Brown J. in *London Underground Ltd v. National Union of Railwaymen (No. 2)*⁸³ that:⁸⁴

[T]here is no rule of law, no jurisdictional bar to the court entertaining, where justice requires it, an application to discharge an injunction, even following upon a full *inter partes* hearing. Indeed, rather than being *functus*, the court has an inherent jurisdiction to do so. But—and to my mind it is the determinative ‘but’ in the instant case—the court will not do so where it appears that justice between the parties can as readily be achieved by pursuing the right of appeal.

The High Court then stated:⁸⁵

It was not appropriate for me to grant the very same variation sought and refused [earlier] when the second respondent did not appeal against that decision and when there had been no material change in circumstances since that decision or revelation of any error of law to justify my granting the variation.

As such, it is arguable that when the Court referred to Simon Brown J.’s remarks, it had in mind the part relating to when the court should vary the injunction rather than its inherent jurisdiction to hear such an application in the first place. Nonetheless,

⁷⁹ *Ibid.*

⁸⁰ *Goh Su Liat*, *supra* note 53.

⁸¹ [2009] 4 S.L.R.(R.) 33 (H.C.) [AAR].

⁸² *Ibid.* at para. 16.

⁸³ [1989] I.R.L.R. 343 (C.A.).

⁸⁴ *Ibid.* at 344.

⁸⁵ *AAR*, *supra* note 81 at para. 16.

the Court did agree with the entirety of those remarks, and it is arguably the case that the Court *did* hold that it had an inherent jurisdiction to hear such an application. If it had not, then it could not have gone on to consider the merits of the application and then deny the application thereafter.

B. *Categories of Inherent Jurisdiction of the Court of Appeal*

1. *Inherent Jurisdiction to Decide on Jurisdiction to Hear Appeals*

The Court of Appeal has hinted in three cases that it has the inherent jurisdiction to decide on its jurisdiction to hear the particular appeal before it. In *Attorney-General v. Joo Yee Construction Pte Ltd (in liquidation)*,⁸⁶ the Court of Appeal had to decide whether it could hear an appeal if there was no live issue to be decided between the parties. The precise facts of the case need not detain us; suffice it to say that the court had determined that there was no real live issue and that the only question was the effect this determination had on its jurisdiction to hear the appeal. In the course of its judgment, the court said:⁸⁷

We also accepted that s 34 of the *Supreme Court of Judicature Act* (Cap 322) does not state exhaustively those instances in which no appeal lies to the Court of Appeal. *The court exercises its inherent jurisdiction in cases of this kind.* The principles on which that inherent jurisdiction is exercised were authoritatively stated by the House of Lords in the case of *Sun Life Assurance Co of Canada v Jervis* and restated by the House of Lords in the case of *Ainsbury v Millington*.

The puzzle is what the court meant by saying it “exercises its inherent jurisdiction in cases of this kind”. Section 34 of the *Supreme Court of Judicature Act 1985*⁸⁸ provides some clues. This section provides guidance on the matters that are non-appealable or appealable only with leave to the Court of Appeal. If the court in *Joo Yee Construction* stated that such guidance was not exhaustive, then the related question must be how to determine those non-appealable matters that are not expressly stated. Thus interpreted, “cases of this kind” means those cases in which the Court of Appeal’s jurisdiction to hear the matter concerned remains to be determined, and the court had to exercise its “inherent jurisdiction” to determine this question. Such an interpretation finds support in the principles extracted by the court from the two House of Lords decisions it cited. The court thought that *Sun Life Assurance Co of Canada v. Jervis*⁸⁹ stood for the principle that:⁹⁰

[A] court will not undertake to decide on issues, which if decided in the appellant’s favour, will not gain him “something which he would not gain if he lost”, and

⁸⁶ [1992] 2 S.L.R.(R.) 165 (C.A.) [*Joo Yee Construction*].

⁸⁷ *Ibid.* at para. 11 [emphasis added].

⁸⁸ Cap. 322, 1985 Rev. Ed. Sing., s. 34 [SCJA 1985].

⁸⁹ [1944] 1 All E.R. 469 (H.L.).

⁹⁰ *Joo Yee Construction*, *supra* note 86 at para. 14.

will not decide on issues simply to have a decision that will be useful for similar cases in the future.

The court thought that *Ainsbury v. Millington*⁹¹ provided similar guidance.⁹² It was the principle extracted from these two cases which helped the court decide whether it could hear the particular appeal. Thus, it is likely that when the court said that it had exercised its “inherent jurisdiction” in “cases of this kind”, it meant that it had exercised its “inherent jurisdiction” to determine whether it could hear the appeal concerned.

In *Tony Koh*, the Court of Appeal was likewise unclear on its “inherent jurisdiction” on this matter, although intentionally so. In that case, the applicants were charged with murder under s. 302 of the *Penal Code* read with s. 34,⁹³ but were convicted in the High Court of the lesser charge of robbery with hurt under s. 394 of the *Penal Code*. On appeal by the Prosecution, the applicants were convicted of the original charge of murder and sentenced to suffer death. The applicants then filed motions arguing that their convictions on a lesser charge had not amounted to an acquittal and that the Prosecution’s appeal thus fell outside the language and scope of s. 44(3) of the *SCJA 1999*. In rejecting the Prosecution’s first argument that the Court of Appeal did not have the jurisdiction to hear the said motions because it was *functus officio*, the Court of Appeal held that it had the jurisdiction and power to entertain the motions by virtue of s. 29A of the *SCJA 1999*. The Court of Appeal reasoned that what was involved in the case was an application for it to consider the issue of jurisdiction to hear the earlier appeal by the Prosecution in the first place. While noting that this issue of jurisdiction ought to have been raised and considered during the hearing of the earlier appeal itself, the Court of Appeal held that there was “no reason in principle why this [court] should be precluded from considering applications which could clearly have been argued and heard as a preliminary point of law during the hearing of the actual appeal”.⁹⁴ The basis of this holding was that the Court of Appeal had not considered this preliminary issue of jurisdiction earlier and hence, notwithstanding the physical lapse of time between the earlier appeal and the motions, it remained seised of the case and, specifically, retained the jurisdiction to consider the issue of jurisdiction which ought to have been raised in the earlier appeal but which was not. As mentioned earlier, the Court of Appeal declined to base this reasoning on its inherent jurisdiction, but implied that if it were not for the availability of a statutory basis, it might have been willing to do so.

2. *Inherent Jurisdiction to Entertain Motion to Review Earlier Appeal*⁹⁵

In conjunction with the Court of Appeal’s inherent jurisdiction to determine its jurisdiction, there is a corollary inherent jurisdiction to review the validity of its earlier

⁹¹ [1987] 1 All E.R. 929 (H.L.).

⁹² *Joo Yee Construction*, *supra* note 86 at paras. 17-18.

⁹³ *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.) [*Penal Code*], ss. 34 and 302.

⁹⁴ *Tony Koh*, *supra* note 38 at para. 19.

⁹⁵ See Goh Yihan, “The (Criminal) Inherent Jurisdiction of the Court of Appeal” [2008] Sing. J.L.S.395 at 409-410. See also Jeffrey Pinsler, “Whether a Singapore Court has a Discretion to Exclude Evidence Admissible in Criminal Proceedings” [2010] 22 S.Ac.L.J. 335 at 352.

decisions. This, however, has only been hinted at and the Court of Appeal has never confirmed such an inherent jurisdiction exists. In *Ramachandran a/l Suppiah v. Public Prosecutor*,⁹⁶ the applicants' appeals against conviction and sentence of death for murder were heard by the Court of Appeal (sitting then as the Court of Criminal Appeal) on 13 April 1989, one week before the *Judicial Committee (Amendment) Act*⁹⁷ came into operation on 21 April 1989. One of the judges who sat on the appellate bench during the hearing of these appeals then retired on 30 September 1989. The appeals were purportedly dismissed some 21 months later in a reserved judgment dated 10 January 1991, which was also signed by the retired judge. The applicants applied by way of criminal motion for leave to appeal to the Privy Council or for an order that the judgment dated 10 January 1991 be declared invalid and the convictions set aside. In ordering a rehearing of the appeal, the Court of Appeal reasoned that the judgment dated 10 January 1991 was invalid. The court held that the tribunal that signed the judgment dated 10 January 1991 was not a duly constituted Court of Criminal Appeal within the description contained in s. 43 of the *SCJA 1985*. Therefore, it was not competent to deliver judgment pursuant to s. 56(1) of that Act. Furthermore, the court found that the tribunal was not competent to determine the appeals, since that determination occurred only on the date of delivery of judgment and therefore was likewise effected by a tribunal that was not competent to do so.

However, the Court of Appeal did not address the important issue of its jurisdiction to entertain the motion. If the motion was in the nature of a prayer for a review of the Court of Appeal's *own* decision in the earlier appeal, it is apparent that the Court of Appeal had no *statutory* jurisdiction under the *SCJA 1985* to even entertain the motion. Therefore, it must be that the Court of Appeal had in *Ramachandran a/l Suppiah* exercised its inherent jurisdiction to entertain the motion and its power therein to order the rehearing before a new Court of Criminal Appeal without saying so.

3. *Inherent Jurisdiction to Hear an Application to Strike Out Parts of Petition of Appeal Which was not Provided for by the Rules of Court*

In *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew*,⁹⁸ the Court of Appeal held that it has the inherent jurisdiction to hear a notice of motion to strike out certain paragraphs of the petition of appeal. This was on the ground that no notice of appeal against the judge's refusal to accede to the application had been filed and served as required by O. 57 r. 4(1) of the *1970 Rules*. The court held that although there was no express provision in the *1970 Rules* which empowered it to hear an application of this nature, it agreed with English decisions such as *Aviagents Ltd v. Balstravest Investments Ltd*⁹⁹ and *Burgess v. Stafford Hotel Ltd*¹⁰⁰ which held that

⁹⁶ [1992] 2 S.L.R.(R.) 571 (C.A.) [*Ramachandran a/l Suppiah*].

⁹⁷ No. 21 of 1989, Sing.

⁹⁸ [1991] 1 S.L.R.(R.) 728 (C.A.) [*Jeyaretnam Joshua Benjamin*].

⁹⁹ [1966] 1 W.L.R. 150 (C.A.).

¹⁰⁰ [1990] 1 W.L.R. 1215 (C.A.).

the court had the “power to do so by virtue of its inherent jurisdiction over its own proceedings”.¹⁰¹

4. *The Court of Appeal has the Inherent Jurisdiction to Reopen its Own Decision*¹⁰²

In civil matters, the Court of Appeal has in *Lee Tat Development (CA)* held that it has the inherent jurisdiction to reopen and rehear an issue that it had decided in breach of natural justice as well as to set aside (in appropriate cases) the whole or part of its earlier decision founded on that issue.¹⁰³

However, in criminal matters, the Court of Appeal in *Yong Vui Kong v. Public Prosecutor*¹⁰⁴ considered that it remained an open question whether it had the inherent jurisdiction to reopen an appeal (on which judgment had been delivered) in the light of new evidence which could prove that the offender had been wrongly convicted or if it could be shown that the court had made a mistake on the law.¹⁰⁵ It noted that none of the previous cases in which the Court of Appeal had made observations with regard to this question actually involved a situation in which new exonerative evidence was discovered, or where an error of law had been made.¹⁰⁶ It is interesting that the court characterised the reopening of its own decisions as a “review” of those decisions.¹⁰⁷ As discussed earlier, *Ramachandran a/l Suppiah* is arguably an instance in which the Court of Appeal did assume the inherent jurisdiction to review its own decision. That case may, however, be distinguished on the basis that the Court of Appeal there had only reviewed the procedural aspect of its past decision, *i.e.*, whether the judgment was delivered by a competent court, instead of its substantive merits.

IV. THE INHERENT POWERS OF THE SINGAPORE COURTS

This article shall now discuss the inherent powers of the Singapore courts. In categorising these inherent powers, it is helpful to draw upon those categories which Jacob used in his influential piece, *viz.*, (a) control over process; (b) control over persons and (c) control over powers of inferior courts and tribunals.¹⁰⁸ However, although Jacob had hoped that these categories would bring about “some order and method to an otherwise complex, confused and rather formless subject”,¹⁰⁹ the truth is that, given their desire to maintain flexibility in the exercise of their inherent jurisdiction

¹⁰¹ *Jeyaretnam Joshua Benjamin*, *supra* note 98 at para. 5.

¹⁰² See generally Goh, “The (Criminal) Jurisdiction of the Court of Appeal”, *supra* note 95, for a discussion of the issue.

¹⁰³ *Lee Tat Development (CA)*, *supra* note 3 at para. 55.

¹⁰⁴ [2010] 2 S.L.R. 192 (C.A.) [*Yong Vui Kong*].

¹⁰⁵ The characterisation that this was an “open question” does not actually appear in the judgment itself, but only in the headnotes. Nonetheless, it is clear from the tenor of the judgment that this indeed an open question.

¹⁰⁶ *Yong Vui Kong*, *supra* note 104 at para. 15.

¹⁰⁷ *Ibid.*

¹⁰⁸ Jacob, *supra* note 13 at 32.

¹⁰⁹ *Ibid.*

or inherent powers, the courts were never going to be bound by categories formulated in an academic article. As we shall see, even in Singapore, there are powers exercised by the courts that escape categorisation according to Jacob's article. It may therefore be helpful to categorise the inherent powers exercised by the Singapore courts differently. In this respect, Mason suggested another way of classifying these powers according to the functions they played: (a) ensuring convenience and fairness in legal proceedings; (b) preventing steps being taken that would render judicial proceedings inefficacious; (c) preventing abuse of process; and (d) acting in aid of superior courts and in aid or control of inferior courts and tribunals.¹¹⁰ These categories may be usefully combined with Jacob's to form new categories that are helpful in the local context. It is suggested that there are two broad categories of the Singapore courts' inherent powers: procedural and substantive. Under their inherent procedural powers, the following categories can be discerned: (a) control over present processes; (b) control over abuse; (c) consequential control over orders; (d) control over certain classes of persons; and (e) control over powers of inferior courts or tribunals.

A. *Inherent Procedural Powers*

1. *Control Over Present Process*

The courts have certain inherent procedural powers with respect to proceedings presently before them. Several sub-categories can be discerned from the cases and academic texts: (a) allowing intervention of parties;¹¹¹ (b) exercising the power of joinder;¹¹² (c) controlling the evidence included;¹¹³ (d) disallowing discovery;¹¹⁴ (e) sealing court documents;¹¹⁵ (f) ordering the record of the trial be amended;¹¹⁶ (g) ordering a stay of the action;¹¹⁷ (h) striking out notice of appeal filed out of time;¹¹⁸ (i) adjourning hearings;¹¹⁹ (j) extending time;¹²⁰ and (k) compelling observance of its processes through sanctions.¹²¹

¹¹⁰ Keith Mason, "The Inherent Jurisdiction of the Court" (1983) 57 A.L.J. 449.

¹¹¹ See *The "Nagasaki Spirit"* [1994] 2 S.L.R.(R.) 165 (H.C.) at para. 13; *Lea Tool and Moulding Industries Pte Ltd (in liquidation) v. CGU International Insurance plc* [2000] 3 S.L.R.(R.) 745 (H.C.).

¹¹² *Family Food Court v. Seah Boon Lock* [2008] 4 S.L.R.(R.) 272 (C.A.).

¹¹³ *Lee Kuan Yew v. Vinocur John* [1995] 3 S.L.R.(R.) 38 (H.C.) at para. 23; *Beckett Pte Ltd v. Deutsche Bank AG* [2005] 3 S.L.R.(R.) 555 (C.A.) at paras. 34-36; *Salwant Singh s/o Amer Singh v. Public Prosecutor* [2005] 1 S.L.R.(R.) 632 (C.A.).

¹¹⁴ *Computerland Corp v. Yew Seng Computers Pte Ltd* [1991] 2 S.L.R.(R.) 379 (C.A.).

¹¹⁵ *Navigator Investment Services Ltd v. Acclaim Insurance Brokers Pte Ltd* [2010] 1 S.L.R. 25 (C.A.).

¹¹⁶ *Soon Peng Yam v. Maimon bte Ahmad* [1995] 1 S.L.R.(R.) 279 (C.A.) at para. 28, citing *Clack v. Wood* (1882) 9 Q.B.D. 276 and *Thynne v. Thynne* (1955) P. 272.

¹¹⁷ This is clearer in civil matters. See *Amerco Timbers Pte Ltd v. Chatsworth Timber Corp Pte Ltd* [1977-1978] 1 S.L.R.(R.) 112 (C.A.). This especially so under the principle of *forum non conveniens*. See e.g., *Chan Chin Cheung v. Chan Fatt Cheung* [2010] 1 S.L.R. 1192 (C.A.). However, the position is not as clear in criminal matters. See *Public Prosecutor v. Ho So Mui* [1993] 1 S.L.R.(R.) 57 (C.A.) at para. 35.

¹¹⁸ *Riduan bin Yusof v. Khng Thian Huat* [2005] 2 S.L.R.(R.) 188 (C.A.) at para. 18.

¹¹⁹ *Wong Phila Mae v. Shaw Harold* [1991] 1 S.L.R.(R.) 680 (C.A.); *Shaw Harold v. Wong Phila Mae* [1989] 2 S.L.R.(R.) 470 (H.C.) at para. 8.

¹²⁰ *Selco (Singapore) Ltd v. Delporte* [1968-1970] S.L.R.(R.) 491 (F.C.) at para. 2.

¹²¹ *K Solutions Pte Ltd v. National University of Singapore* [2009] 4 S.L.R.(R.) 254 (H.C.).

2. Control Over Abuse of Process

In *Lai Shit Har v. Lau Yu Man*,¹²² it was held that the court has the inherent power to prevent an abuse of its processes.¹²³ Jacob has provided four useful sub-categories with which to classify the situations in which this power may be invoked,¹²⁴ viz., (a) proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;¹²⁵ (b) proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way;¹²⁶ (c) proceedings which are manifestly groundless or without foundation or which serve no useful purpose;¹²⁷ and (d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.¹²⁸ In addition to the four categories above, the courts have the inherent power to strike out actions on the ground of want of prosecution and therefore an abuse of process.¹²⁹

3. Consequential Control Over Orders

The courts retain inherent powers to control orders already made. For example, they can order a stay of execution,¹³⁰ refuse to enforce an “unless order”,¹³¹ and recall, clarify, or vary a decision that has not been perfected.¹³²

4. Control Over Certain Classes of Persons

The courts have inherent powers to control certain classes of persons. First, the courts have always asserted an inherent power over its officers. In the exercise of this power, it has been said that the courts may order taxation for legal bills where

¹²² [2008] 4 S.L.R.(R.) 348 (C.A.).

¹²³ *Ibid.* at para. 22. See also *Chee Siok Chin v. Minister for Home Affairs* [2006] 1 S.L.R.(R.) 582 (H.C.) at para. 34.

¹²⁴ Jacob, *supra* note 13 at 40 and 41.

¹²⁵ See e.g., *Heng Joo See v. Ho Pol Ling* [1993] 2 S.L.R.(R.) 763 (H.C.) at para. 21 (inherent power to revoke a decree nisi on its own accord); *United Overseas Bank Ltd v. Chung Khiaw Bank Ltd* [1968-1970] S.L.R.(R.) 194 (F.C.) (inherent power to set aside an order made on the originating summons which is a nullity).

¹²⁶ See e.g., *Re Mechanised Construction Pte Ltd* [1989] 1 S.L.R.(R.) 500 (H.C.); *Four Pillars Enterprises Co Ltd v. Beiersdorf Aktiengesellschaft* [1999] 1 S.L.R.(R.) 382 (C.A.) [Four Pillars]; *Metalform Asia Pte Ltd v. Holland Leedon Pte Ltd* [2007] 2 S.L.R.(R.) 268 (C.A.).

¹²⁷ See e.g., *Low Fong Mei v. Ko Teck Siang* [1989] 1 S.L.R.(R.) 514 (H.C.).

¹²⁸ However the High Court declined to decide the existence of this power determinatively in *Attorney-General v. Tee Kok Boon* [2008] 2 S.L.R.(R.) 412 (H.C.). See also *Chua Choon Lim Robert v. MN Swami* [2000] 2 S.L.R.(R.) 589 (H.C.).

¹²⁹ *Mercurine Pte Ltd v. Canberra Development Pte Ltd* [2008] 4 S.L.R.(R.) 907 (C.A.); *S3 Building Services Pte Ltd v. Sky Technology Pte Ltd* [2001] 3 S.L.R.(R.) 213 (C.A.); *Jeyaretnam Joshua Benjamin v. Lee Kuan Yew* [2001] 2 S.L.R.(R.) 831 (C.A.); *The “Tokai Maru”* [1998] 2 S.L.R.(R.) 646 (C.A.); *Wee Siew Noi v. Lee Mun Tuck (administrator of the estate of Lee Wai Leng, deceased)* [1993] 1 S.L.R.(R.) 583 (C.A.); *Lee Mun Tuck v. Tan Chin Kah* [1990] 2 S.L.R.(R.) 533 (H.C.).

¹³⁰ *Gao Bin v. OCBC Securities Pte Ltd* [2009] 1 S.L.R.(R.) 500 (H.C.) at para. 15.

¹³¹ *Wellmix Organics*, *supra* note 1.

¹³² *Thomson Plaza (Pte) Ltd v. Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 S.L.R.(R.) 246 (C.A.); *Godfrey Gerald QC*, *supra* note 56.

its statutory jurisdiction is inapplicable.¹³³ As it happens, a subsequent High Court decision has questioned this power as being contrary to legislative provisions.¹³⁴ Nonetheless, it is relatively undoubted that the courts have an overriding inherent power to direct an offending solicitor to recover only a fraction of his usual costs for having transgressed the statutory directives on jurisdiction.¹³⁵ Secondly, both the High Court¹³⁶ and the Court of Appeal have the inherent power to punish acts of contempt. Thirdly, in related matters, the court has the inherent power to direct the official receiver to attend any hearing where issues relating to the remuneration of privately appointed liquidators arise.¹³⁷

5. *Control Over Powers of Inferior Courts and Tribunals*

The High Court has held that it has an inherent power to make orders to aid any proceedings, including those that take place before them, and specific power need not be given to the courts to enable them to make orders to assist foreign court proceedings.¹³⁸

B. *Inherent Substantive Powers*

The suggestion that the courts have inherent *substantive* powers, or inherent powers which affect substantive matters, may seem to be a startling one. After all, the Court of Appeal has said that the doctrine of ‘inherent jurisdiction’ is only concerned with procedural matters, and that it cannot be invoked to alter the substantive law.¹³⁹ The High Court has similarly said that the focus is “on procedure, rather than substance”.¹⁴⁰ Although the distinction between procedure and substance is often hard to draw,¹⁴¹ a possible definition of substantive law may be “that part of law which creates, defines, and regulates rights and duties of parties, as opposed to ‘adjective, procedural, or remedial law,’ which prescribes method of enforcing the rights or obtaining redress for their invasion”.¹⁴² Similarly, the Court of Appeal in *Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v. Tan Hong Woon*¹⁴³

¹³³ *Re Lau Liat Meng* [1992] 2 S.L.R.(R.) 186 (H.C.); *Wee Harry Lee v. Haw Par Brothers International Ltd* [1979-1980] 1 S.L.R.(R.) 603 (C.A.); *Haw Par Brothers International Ltd v. Wee Harry Lee* [1979-1980] S.L.R.(R.) 449 at para. 5 (H.C.).

¹³⁴ *Chia Ah Sim v. Ronny Chong and Co* [1993] 1 S.L.R.(R.) 321 (H.C.) [*Chia Ah Sim*].

¹³⁵ *Cheong Ghim Fah v. Murugian s/o Rangasamy* [2004] 3 S.L.R.(R.) 193 (H.C.).

¹³⁶ *You Xin v. Public Prosecutor* [2007] 4 S.L.R.(R.) 17 (H.C.); *Attorney-General v. Chee Soon Juan* [2006] 2 S.L.R.(R.) 650 (H.C.).

¹³⁷ *Re Econ Corp Ltd (in provisional liquidation)* [2004] 2 S.L.R.(R.) 264 (H.C.).

¹³⁸ *Front Carriers Ltd v. Atlantic & Orient Shipping Corp* [2006] 3 S.L.R.(R.) 854 (H.C.), contra *Swift-Fortune Ltd v. Magnifica Marine SA* [2007] 1 S.L.R.(R.) 629 (C.A.) [*Swift-Fortune*].

¹³⁹ *Louis Pius Gilbert*, *supra* note 32 at para. 30.

¹⁴⁰ *Wellmix Organics*, *supra* note 1 at para. 91. However, it is arguable that although the “focus” is on procedure, this by definition meant that it is not *exclusively* so. See Pinsler, “The Inherent Powers of the Court”, *supra* note 14 at 37-39.

¹⁴¹ One unifying idea is that of “justice”. See *United Overseas Bank Ltd v. Ng Huat Foundations Pte Ltd* [2005] 2 S.L.R.(R.) 425 (H.C.) at paras. 4-9.

¹⁴² *Sia Kim Yoke v. Public Prosecutor* [1998] 5 M.L.J. 658 (H.C.), drawing from Black’s Law Dictionary (6th ed.) at 1429, which in turn cites *Allen v. Fisher* 574 P 2d 1314 at 1315.

¹⁴³ [2002] 1 S.L.R.(R.) 306 (C.A.).

has said, in the context of construing a statutory provision, that “one must look at the effect and purpose of that provision”, and “[i]f the provision regulates proceedings rather than affects the existence of a legal right, it is a procedural provision”.¹⁴⁴ Perhaps the distinction between procedure and substance is best summarised by the Malaysian High Court case of *Balachandran s/o Samy v. Chew Man Chan*,¹⁴⁵ which held that substantive law bestows rights to a person whereas procedural law determines the mode in which he should move the court in order to enforce such rights. If these distinctions are correct, then the courts have exercised their “inherent powers” in matters that are difficult to characterise as “procedural” and not directly altering the substantive rights between the parties.

1. *Orders Affecting Substantive Rights of Parties*

In *UMCI Ltd*, the High Court held that it has the inherent power to make orders that are reasonably necessary in order for justice to be done in a case or to prevent any abuse of the process of the court.¹⁴⁶ Taken to its logical conclusion, this may extend to making substantive orders. There are other powers asserted by the courts that affect the substantive and not procedural rights of parties.¹⁴⁷

2. *Power to Affect Consent Orders*

It has also been held that the court has the inherent power, in exceptional circumstances, to interfere with a consent order (for example, granting an extension of time), although, in general, a consent order represents a contract with which the court has no power to interfere, save in circumstances in which the court ordinarily may interfere with a contract.¹⁴⁸

3. *Power to Reject Plea of Guilt*

The court has an inherent power to reject a guilty plea unless it is convinced that the accused understands the nature and consequence of his plea and intends to admit without qualification to the offence alleged against him.¹⁴⁹

4. *Specific Areas of Law*

(a) *Damages*: In some instances, the court has the inherent power to give judgment for a sum of money expressed in foreign currency but converted to local currency at the date when the plaintiff was given leave to levy execution.¹⁵⁰

¹⁴⁴ *Ibid.* at para. 12.

¹⁴⁵ [1995] 4 M.L.J. 685 (H.C.).

¹⁴⁶ *UMCI Ltd*, *supra* note 32 at para. 96.

¹⁴⁷ *AP Moller-Maersk A/S (trading as Maersk Sealand) v. Special Entertainment Events, Inc* [2005] 1 S.L.R.(R.) 603 (C.A.) (power to make such order as the court thinks just in an interpleader even though it does interfere with the rights of the parties if that is the just solution of the case); *Salijah bte Ab Latef*, *supra* note 27 (power to grant declaratory relief); *Lee Hiok Ping v. Lee Hiok Woon* [1988] 2 S.L.R.(R.) 326 (H.C.) (power to set aside the notice of taxation and the bill of costs).

¹⁴⁸ *Yeo Boong Hua v. Turf City Pte Ltd* [2008] 4 S.L.R.(R.) 245 (H.C.).

¹⁴⁹ *Thong Sing Hock v. Public Prosecutor* [2009] 3 S.L.R.(R.) 47 at para. 23 (H.C.).

¹⁵⁰ *Brown Noel*, *supra* note 6 at para. 72.

(b) *Admiralty*: In admiralty cases, the courts have asserted the inherent power to alter the order of priorities, depending on the facts of a particular case, for good reasons.¹⁵¹

(c) *Companies*: The court retains an inherent power to amend or set aside a scheme in limited circumstances, such as where consent to the scheme was obtained by fraud.¹⁵²

(d) *Legal profession*: The court may lift the bar under s. 118 of the *Legal Profession Act*¹⁵³ pursuant to its inherent power where the justice of the case requires. Section 118 prohibits a solicitor from suing for costs until the potential defendant has been informed a month in advance through certain specified means.¹⁵⁴

(e) *Trusts*: In addition to its powers under the *Trustees Act*,¹⁵⁵ the court has an inherent power to remunerate trustees.¹⁵⁶ The court also has an inherent power to sanction a variation of a trust in limited circumstances.¹⁵⁷

C. Summary

Thus we observe that there are three broad categories to group the courts' exercise of their inherent jurisdiction and inherent powers. The findings of the previous section may be summarised as follows:

Table 3.
Breakdown of the three categories of inherent jurisdiction and inherent powers as used by the courts.

	Inherent jurisdiction	Inherent procedural powers	Inherent substantive powers
High Court	2	79	9
Court of Appeal	2	40	6
Total number of cases	4	119	15

V. THE LIMITS OF THE COURTS' INHERENT JURISDICTION AND INHERENT POWERS

Having sketched out the Singapore courts' inherent jurisdiction and inherent powers in three broad categories, this article shall suggest a possible means of delimiting their exercise.

¹⁵¹ *The "Eastern Lotus"* [1979-1980] 1 S.L.R.(R.) 176 (H.C.); *The "Eastern Lotus"* [1979-1980] 1 S.L.R.(R.) 389 (C.A.), *c.f.* *Keppel Corp Ltd v. Chemical Bank* [1994] 1 S.L.R.(R.) 54 (C.A.).

¹⁵² *The Oriental Insurance Co Ltd v. Reliance National Asia* [2008] 3 S.L.R.(R.) 121 (C.A.); *Re Reliance National Asia Pte Ltd* [2008] 1 S.L.R.(R.) 569 (H.C.).

¹⁵³ Cap. 161, 2001 Rev. Ed. Sing., s. 118.

¹⁵⁴ *Wee Soon Kim Anthony v. Lim Chor Pee* [2005] 4 S.L.R.(R.) 367 (H.C.) [*Anthony Wee*].

¹⁵⁵ Cap. 337, 2005 Rev. Ed. Sing.

¹⁵⁶ *Hwa Soo Chin v. Personal Representatives of the Estate of Lim Soo Ban, deceased* [1994] 2 S.L.R.(R.) 1 (H.C.).

¹⁵⁷ *Rajabali Jumabhoy and others v. Ameerli R Jumabhoy* [1998] 2 S.L.R.(R.) 434 (C.A.).

A. Existing Tests and Limits

For a long time the Singapore courts have been content with broad tests to limit the exercise of their inherent jurisdiction and inherent powers. Thus they have proclaimed that their “inherent jurisdiction”¹⁵⁸ should be “exercised in special circumstances where the justice of the case so demands”.¹⁵⁹ Or that it should be “invoked when it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties.”¹⁶⁰ If pressed for a one-word summary of the applicable test, the Court of Appeal might say, as it in fact did in *Anthony Wee*, that the essential touchstone is one of “need”.¹⁶¹

These tests are useful because they are highly flexible. They ensure that, in a case of true necessity, the court is able to draw upon its inherent jurisdiction or inherent powers to do justice. However, the weakness of these tests is also their flexibility—and concomitant uncertainty. They are too broad and too amorphous. They assume that a *uniform* spectrum of “need” and “justice” runs through all types of cases, without distinction and without variation. This in turn flows from an assumption that the term “inherent jurisdiction” (or “inherent power(s)”) consists of a single idea when in fact it admits of three possible concepts, *viz.*, the court’s inherent jurisdiction (in the “authority” sense) to hear matters in the first place; the court’s inherent powers (in the “power” sense) to affect *procedural* rights between parties and uphold or facilitate the court’s procedural process; and the court’s inherent powers (again in the “power” sense) to affect *substantive* rights between the parties. It is evident that the degree of “need” in each category is different. To some extent, this is shown by the statistical analysis earlier: disregarding the correctness of the courts’ use of the expressions “inherent jurisdiction” and “inherent power(s)”, the *actual* usage is by far, slanted towards the exercise of an inherent *power* as opposed to an inherent *jurisdiction*. In other words, there have been very few cases in which the courts have claimed an inherent authority to hear matters.

Any analytical framework must be able to account for differences in these three concepts. It must also consider the additional fact that courts regard themselves as being subject to legislative intent. Indeed, the courts have consistently said that because they are creatures of statute, their jurisdiction and powers are statutorily constrained.¹⁶² The correctness of this judicial stance need not be debated here, for the present purpose is not to justify such a stance, but to explain it in the larger context of justifying a broader framework. Thus, the default position adopted will be one of parliamentary sovereignty in the manner acknowledged by the courts. Given that the courts’ jurisdiction and powers are not defined by statute exhaustively, how then do we limit the courts’ exercise of their inherent jurisdiction and powers?

¹⁵⁸ Which, as discussed, could mean either of two things.

¹⁵⁹ *Roberto Building Material Pte Ltd v. Overseas-Chinese Banking Corp Ltd* [2003] 2 S.L.R.(R.) 353 (C.A.) at para. 16.

¹⁶⁰ *Anthony Wee*, *supra* note 154 at paras. 27 and 30, quoting Jacob, *supra* note 13.

¹⁶¹ *Ibid.*

¹⁶² Some examples include the *Singapore Court Practice*. See *e.g.*, Jeffrey Pinsler, *Singapore Court Practice 2005* (Singapore: LexisNexis, 2005).

B. *The Proposed Test*

This article suggests a three-stage test to determine the limit of the courts' inherent jurisdiction and inherent powers: assuming that there is no express legislative exclusion, the test is one of "need" but qualified by a sliding scale of assumptions about legislative exclusion. Such "legislative exclusion" refers to whether Parliament has excluded the exercise of the inherent jurisdiction or inherent power. The question of whether there is express (or implied) legislative exclusion is answered by way of purposive interpretation of the statute concerned. The principles relating to such a method of statutory interpretation are well known and need not be discussed in detail; suffice it to say that the starting point in Singapore remains s. 9A of the Interpretation Act¹⁶³ which mandates such an approach.¹⁶⁴

1. *Express Exclusion Defeats Courts' Exercise of Inherent Jurisdiction and Inherent Powers*

It is clear under Singaporean law that if there is an express exclusion of the courts' exercising some kind of jurisdiction or power, then there is no scope for such exercise.¹⁶⁵ This supplies the first stage of the suggested test. The reason for this is the sovereignty of Parliament. As the High Court put the matter in *Chia Ah Sim*, this means that the courts are under a duty to apply the legislation made by Parliament.¹⁶⁶ Thus, where that legislation is expressed in plain and unambiguous terms, the courts must apply it in accordance with its wording. Consequently, once an inconsistent law is passed by Parliament, the common law will be abrogated.¹⁶⁷ An example of this rule being applied is the case of *Les Placements*, in which the High Court reiterated that there can be no appeal against a judge's decision granting unconditional leave to defend by reason of the statutory provision under the *SCJA 1999*.¹⁶⁸ The court held that it could not invoke its inherent jurisdiction in aid.¹⁶⁹

2. *Legislative Silence: Sliding Scale of Assumptions as to Implied Exclusion*

Most of the time Parliament does not *expressly* indicate its intent in statutes. Assuming no express prohibition, the second stage of the test is then to ask whether

¹⁶³ Cap. 1, 2002 Rev. Ed. Sing., s. 9A.

¹⁶⁴ See Goh Yihan, "Statutory Interpretation in Singapore: 15 Years on from Legislative Reform" (2009) 21 S.Ac.L.J. 97 at paras. 11-27. See also Goh Yihan, "A Comparative Account of Statutory Interpretation in Singapore" (2008) 29 Statute L.R. 195 for a comparison between the Singapore and Australian provisions regarding statutory interpretation.

¹⁶⁵ Again this is based on the courts' assumption that they are subject to the legislative intent, an assumption which this article takes as correct.

¹⁶⁶ *Chia Ah Sim*, *supra* note 134 at para. 37.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Les Placements*, *supra* note 49 at para. 12.

¹⁶⁹ See *Tan Kok Ing v. Tan Swee Meng* [2003] 1 S.L.R.(R.) 657 (H.C.) for the High Court's application of the same principle to the jurisdiction of the Magistrate's Court. Compare *Rightrac Trading v. Ong Soon Heng* (trading as *Everbright Engineering & Trading*) (*Seow Hock Ann*, third party) [2003] 4 S.L.R.(R) 505 (H.C.).

Parliament has *impliedly* excluded the courts' inherent jurisdiction or power in the matter concerned. This approach reflects the constitutional point that the courts are bound by the legislative intent as embodied in statutes. Sometimes, an exclusion can be discerned by implication *via* the text, but often courts are left with little guidance, save for their self-imposed broad tests based on "need" and "justice". To resolve this uncertainty, it is suggested that there should be a sliding scale of assumptions as to implied exclusion through legislative silence, with the strongest assumption for such exclusion in the context of exercising inherent jurisdiction, and the weakest in the context of exercising of inherent procedural powers. Another way of explaining these assumptions is to view them as *imputations* of legislative intent where there is none, express or implied, on a reading of the statutory text. But on either account, parliamentary sovereignty (in the sense that legislative intent overrides judicial authority or power) forms an important part of the explanation.

Through the use of these assumptions, the degree of "need or justice" that is required before the court invokes its inherent jurisdiction or inherent powers is thereby calibrated with greater nuance than if we simply rely on blanket tests of "need" or "justice", which may be too broad and incapable of precise application to the situation at hand. This article shall now look at the three categories in greater detail.

(a) *Inherent jurisdiction—Less frequently invoked as Parliament would more likely have thought about courts' jurisdiction*: In this first category, the courts have frequently spoken of their inherent jurisdiction (in the "authority" sense) as being statutorily constrained. This may be because the courts regard their authority as a matter primarily for Parliament to decide. The existence of a court's authority to hear a matter is the starting consideration of any court, and it is from that perspective that Parliament may be deemed to be most concerned about this matter. Indeed, from the earliest times, Parliament has been interested in demarcating the authority of the courts. Thus, as Professor Pinsler has pointed out in great detail, the *Second Charter of Justice*¹⁷⁰ vested our predecessor courts with "such jurisdiction and authority as our Court of King's Bench and our Justices thereof...".¹⁷¹ Historical documents published at around the same time show that the expression "jurisdiction and authority" was regarded as being concerned with the jurisdiction of the courts in the "authority" sense, as opposed to the "power" sense.¹⁷² More recently, where the

¹⁷⁰ *Statute of Westminster, 1814* (U.K.), 6 Geo. IV, c. 85.

¹⁷¹ Pinsler, "The Inherent Powers of the Court of Appeal", *supra* note 14 at 2.

¹⁷² See e.g., *Sixteenth Parliament of Great Britain*: fourth session (26 January 1787) at 9 ("... exercise a Jurisdiction and Authority over all their members appertaining to the Head Port..."). In cases where "power" is contemplated, the expression "powers, jurisdiction and authority" is used. See e.g., *Sixteenth Parliament of Great Britain*: fourth session (6 March 1787) at 430 (*Bill for Regulating Trial of Controverted Elections of Members of United Parliament for Ireland, and for Regulating Qualifications of M.P.s 1801*). Indeed, the comment made with respect to the "jurisdiction and authority" clause was: "This paragraph describes the nature of the Court's jurisdiction, but does not define the persons over whom it extends." (*Appendix to the report on the affairs of the East India Company. V. On the establishment of legislative councils, a new system of courts of justice, and a code of laws, in British India* at 19).

Supreme Court of Judicature Act has been amended directly and substantively,¹⁷³ it has often concerned the courts' jurisdiction.¹⁷⁴

There are numerous cases that give effect to this assumption. In *Re China Underwriters Life and General Insurance Co Ltd*¹⁷⁵ the issue was whether the court had the jurisdiction to entertain an application for a court-ordered examination, made pursuant to s. 285 of the *Companies Act*,¹⁷⁶ of several individuals who were connected with the defendants. Holding that it has no such jurisdiction, the High Court pointed out that the jurisdiction of the court in relation to the winding up of companies was derived from Part X of the *Companies Act*, and the court had no jurisdiction under Part X in respect of companies not wound up thereunder, which was the case here.¹⁷⁷ This was because ss. 285 and 286 both refer to "the company", which is statutorily defined as a company incorporated pursuant to the *Companies Act* or any previous corresponding written law, *i.e.*, Singapore companies. The relevance of Part X is that ss. 285 and 286 are both enacted under that Part, which provisions deal exclusively with the winding up by the court of Singapore companies as well as "unregistered companies" (including foreign companies) which have carried on business in Singapore. Thus the court's jurisdiction in relation to s. 285 was derived from Part X of the *Companies Act*.¹⁷⁸ Although the application did not attempt to invoke the court's inherent jurisdiction, the court was quick to state that it "[did]

¹⁷³ The Act was first enacted in 1969. See Sing., *Parliamentary Debates*, vol. 29, col. 74 (21 June 1969).

¹⁷⁴ On Jurisdiction: Sing., *Parliamentary Debates* vol. 78, col. 681 at 681 (21 September 2004) ("This Bill seeks to amend the Supreme Court of Judicature Act to provide that in all family law cases heard in the Subordinate Courts, there will be an automatic right of appeal to the High Court, with a further appeal to the Court of Appeal only with the leave of court"); Sing., *Parliamentary Debates*, vol. 69, col. 1628 (26 November 1998)("[T]he Bill seeks to amend the Supreme Court of Judicature Act (Cap. 322) (SCJA) for two purposes: (a) Firstly, to raise the claim threshold under which leave to appeal is required and (b) Secondly, to deem any question of law referred to the Court of Appeal by the Public Prosecutor arising from any criminal matter determined by the High Court to be a question of public interest"); Sing., *Parliamentary Debates*, vol. 61, col. 88 at 88 and 94 (12 April 1993)("[T]his Bill seeks to introduce amendments to the Constitution which, together with certain of the other proposed amendments to the Supreme Court of Judicature Act contained in a separate Bill, will enable a permanent single Court of Appeal to be created", re-define the original civil jurisdiction and criminal jurisdiction of the High Court, and restrict appeals to the Court of Appeal); Sing., *Parliamentary Debates*, vol. 46, col. 707 (10 January 1986) ("The amendment to section 34(1)(a) of the Supreme Court of Judicature Act is for consistency. At present no appeal shall be brought to the Court of Appeal where the amount or value of the subject matter in the trial is less than \$1,000"); Sing., *Parliamentary Debates*, vol. 37, col. 340 (17 February 1978) ("This Bill seeks to extend the jurisdiction of the High Court to empower it to try any person charged with hijacking, destroying or damaging any aircraft or air navigation installations or other offences under the Bill committed in Singapore or elsewhere").

On Powers: Sing., *Parliamentary Debates*, vol. 65, col. 333 (12 May 1995) ("[T]his Bill and the Subordinate Courts (Amendment) Bill [allow]... a Judge or Judicial Commissioner who reserves judgment in any proceedings to deliver his judgment even though his appointment as a Judge or Judicial Commissioner might have expired or has been terminated; and to establish a new Rules Committee under the Supreme Court of Judicature Act to make a new set of Rules which will govern civil proceedings in both the Supreme Court and the Subordinate Courts); Sing., *Parliamentary Debates*, vol. 61, col. 94 at 98 (12 April 1993) ("[E]mpowers the High Court to make an order, on the application of the Public Prosecutor, for an accused person who has been acquitted by the Court to be remanded in custody pending the filing of an appeal by the Public Prosecutor").

¹⁷⁵ [1988] 1 S.L.R.(R.) 40 (H.C.) [*Re China Underwriters Life*].

¹⁷⁶ Cap. 50, 1988 Rev. Ed. Sing., s. 285.

¹⁷⁷ *Re China Underwriters Life*, *supra* note 175 at para. 37.

¹⁷⁸ *Ibid.* at paras. 16 and 17.

not have such jurisdiction or power”.¹⁷⁹ It stressed that the jurisdiction or power of the court was “statutory in origin”¹⁸⁰ in this respect and so “had to be exercised within the ambit of such legislative intent”.¹⁸¹ But why was the court’s jurisdiction *exclusively* statutory here? A coincidental statutory provision does not necessarily rule out the exercise of a court’s inherent (*procedural*) power, but seemingly rules out the court’s exercise of its inherent *jurisdiction*. The difference is explicable if one accepts that there is a stronger assumption of implied exclusion with respect to jurisdictional matters than to power. Because Parliament is more concerned with issues of jurisdiction, legislative “silence” in the form of the provision of jurisdiction (and nothing further) is more readily interpreted as impliedly exhaustive, and as excluding the court’s *inherent jurisdiction* in the same respect.

The Court of Criminal Appeal case of *Wong Hong Toy v. Public Prosecutor*¹⁸² provides a similar example. In that case, the appellants had been convicted of making false declarations in the District Court. Their appeals against conviction and sentence were dismissed by the High Court. The appellants then applied for the High Court to exercise its discretion under s. 60 of the *Supreme Court of Judicature Act 1970*,¹⁸³ to refer certain questions of public interest to the Court of Criminal Appeal. This application was denied and the appellants appealed against that decision. In two separate criminal motions to the Court of Criminal Appeal, the appellants applied for the court to answer questions of public interest and also to set aside the High Court judge’s orders. The issue was whether the Court of Criminal Appeal had the jurisdiction to entertain those actions. The court answered in the negative. It reiterated there was no general right of appeal in criminal cases except such as was provided by law.¹⁸⁴ It also said that it was a creature of statute and its jurisdictions were those conferred by the *SCJA 1970*.¹⁸⁵ In this respect, s. 44 of the *SCJA 1970*, was key and provided as follows:

(1) The Court of Criminal Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought.

...

(5) The Court of Criminal Appeal shall also have jurisdiction to hear and determine matters brought before it in accordance with section 59.

The Court of Criminal Appeal held that s. 44 of the *SCJA 1970* spelled out its jurisdiction and that it could not go outside that scope.¹⁸⁶ It therefore refused to consider its inherent jurisdiction.¹⁸⁷ With respect to the appeal against the High

¹⁷⁹ *Ibid.* at para. 38.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² [1987] 1 S.L.R.(R.) 213 (C.A.) [*Wong Hong Toy*].

¹⁸³ Cap. 15, 1970 Rev. Ed. Sing., s. 44 [*SCJA 1970*].

¹⁸⁴ *Wong Hong Toy*, *supra* note 182 at para. 48.

¹⁸⁵ *Ibid.* at para. 36.

¹⁸⁶ *Ibid.* at para. 49.

¹⁸⁷ *Ibid.* at para. 23. The argument was raised but not directly dismissed. However, in view of its reasoning, it is a fair assumption to say that the court rejected this argument.

Court's refusal to allow the reference of questions of public interest, it held that it had no jurisdiction under s. 44 as the High Court was exercising its appellate jurisdiction and the Court of Criminal Appeal could not hear an appeal against such a matter pursuant to s. 44(1).¹⁸⁸ As for the criminal motions, the court held that these were really backdoor appeals against the High Court's exercise of its appellate jurisdiction and thus it likewise had no jurisdiction to hear them.¹⁸⁹ The Court of Criminal Appeal thus followed a long line of cases reiterating that the courts are creatures of statute and that they shall only have such jurisdiction as is conferred by statute.¹⁹⁰

The fact that the courts still sometimes hold that they possess an "inherent jurisdiction" (in the "authority" sense) is compatible with the assumption that Parliament impliedly exclude such a jurisdiction. Because it is merely an assumption, and not the immutable position, the courts have, albeit rarely, and subject to a very high threshold of "need", seen fit to rebut this assumption and to hold that they possess an "inherent jurisdiction" whether statutorily provided for or not. When the assumption of implied legislative exclusion is rebutted, it is because Parliament might have (inadvertently) missed out on the provision of certain jurisdiction, although it has very much considered the jurisdiction of the courts. In these cases, legislative silence is not seen as implying that Parliament rejected the jurisdiction concerned. However, the assumption of implied exclusion through silence should only be rebutted if there is a powerful "need" for such jurisdiction. This was vividly illustrated in the case of *Re LP*, where the necessity was very real given that the matter literally involved life and death on an urgent basis. As will be seen when the proposed test is measured against a real case, "need" in this context seems to be based on the severity of negative consequences (*i.e.*, some form of injustice) that might ensue should inherent jurisdiction or powers (as the case may be) not be invoked in a particular case. In the case of inherent jurisdiction, it seems that the severity may need to be so high as to affect the life or liberty of an individual, as was the case in *Re LP*.

(b) *Inherent substantive powers—Less frequently invoked (compared to inherent procedural powers) as Parliament would more likely have thought of courts' substantive powers:* The assumption of implied exclusion through legislative silence is slightly easier to rebut with respect to inherent substantive powers as compared to inherent jurisdiction because Parliament still seems to regard the power to affect substantive rights as very much within its province, albeit to a lesser extent.¹⁹¹ The problem with an inherent substantive power is not so much that it is not derived statutorily, but

¹⁸⁸ *Ibid.* at para. 36.

¹⁸⁹ *Ibid.* at paras. 49-50.

¹⁹⁰ See also *Bachoo Mohan Singh*, *supra* note 43; *Swift-Fortune*, *supra* note 138 at para. 45 ("It bears reiterating at this juncture that the courts do not have any inherent powers to make orders to aid any proceedings except those that take place before them. Specific jurisdiction has to be given to the courts to enable them to make orders to assist foreign court proceedings. As noted above, the courts even required specific statutory provision to enable them to make orders to assist arbitrations within the jurisdiction."); *Knight Glenn Jeyasingam v. Public Prosecutor* [1998] 3 S.L.R.(R.) 196 (H.C.) at para. 13 ("It is trite law that the right of appeal is a creature of statute and not part of the inherent jurisdiction of an appellate court."); *Brown Noel*, *supra* note 6; *The "Ocean Jade"* [1991] 1 S.L.R.(R.) 354 (H.C.) (The court had no inherent jurisdiction apart from statute that it had a right in admiralty to proceed *in rem* against cargo for unpaid freight.).

¹⁹¹ See *e.g.*, Sing., *Parliamentary Debates*, vol. 87 (19 May 2010).

that it is usually exercised without much recourse to precedent. This distinguishes it from the common law, which is usually brought to bear on parties through a careful application of cases of great historical lineage. There is therefore an understandable reluctance on the part of the courts to exercise any inherent substantive power too readily. Thus in *Bayerische Landesbank Girozentrale v. Azlan bin Hashim*,¹⁹² the High Court based its power to amend a judgment entered not on its inherent powers, but on paragraph 14 of the First Schedule to the *SCJA 1999*, which provides that the High Court shall have the “powers to grant all reliefs and remedies at law and in equity”. Likewise in *Shiffon Creations (Singapore) Pte Ltd v. Tong Lee Co Pte Ltd*,¹⁹³ the High Court declined to award damages in lieu of specific performance because it regarded its power to award damages in addition to or in lieu of injunction or specific performance as being based on statute and was not a matter of inherent power of the court, and there was no such statutory power.¹⁹⁴ More recently in *Tan Ah Thee (administrators of the estate of Tan Kiam Poh (alias Tan Gna Chua), deceased) v. Lim Soo Foong*,¹⁹⁵ the High Court rejected counsel’s argument that the court’s power to declare a marriage void is not limited to the grounds provided in s. 105 of the *Women’s Charter*.¹⁹⁶ The court reiterated that its inherent powers cannot be used to override a statutory rule that deals with the exact situation at hand, except, perhaps, in the most exceptional cases.¹⁹⁷ The court was perhaps not “overruling” clear statutory provision had it done so, but rather going beyond what was statutorily provided for. Just as in the case of inherent jurisdiction, courts have interpreted statutory provisions providing for substantive rights to be exhaustive of such corresponding powers.

In these cases the courts admit a *possibility* of declining to follow the clear statutory provisions. There was no similar concession in the cases ruling on the courts’ inherent jurisdiction. In those other cases the courts have steadfastly insisted that they are creatures of statute and that their jurisdictions are statutorily conferred. It seems possible for the courts to think that the statutory provisions are not exhaustive. In other words, the assumption of implied legislative exclusion of the courts exercising their inherent powers through statutory silence is more easily rebutted. The threshold of “need” is therefore not quite as high when compared with matters concerning inherent jurisdiction; a constituting factor of “severity” may thus not be so serious. That this should be so is not overly surprising. While substantive rights (and powers to affect such rights) are things that Parliament is concerned about, it surely cannot statutorily provide for *all* such rights (and powers). The difference between jurisdiction and powers is that the former is a more limited subject, and it seems more plausible to think that Parliament can consider *most* of such jurisdiction. The consequence is that if Parliament has not spoken about the courts’ jurisdiction, its silence is more likely interpreted as implied exclusion. The same does not apply equally to substantive powers, which are more numerous and variegated.

¹⁹² [2002] 2 S.L.R.(R.) 983 (H.C.).

¹⁹³ [1987] S.L.R.(R.) 730 (H.C.) [*Shiffon Creations*].

¹⁹⁴ *Ibid.* at para. 27. In the absence of full arguments, the Court of Appeal declined to comment on this issue in *Shiffon Creations (Singapore) Pte Ltd v. Tong Lee Co Pte Ltd* [1990] 2 S.L.R.(R.) 472 (C.A.).

¹⁹⁵ [2009] 3 S.L.R.(R.) 957 (H.C.) [*Tan Ah Thee*].

¹⁹⁶ Cap. 353, 1997 Rev. Ed. Sing., s. 105.

¹⁹⁷ *Tan Ah Thee*, *supra* note 195 at para. 38.

(c) *Inherent procedural powers*—*Most frequently invoked as Parliament would less likely have thought of all of courts' powers in this respect*: Inherent procedural powers are most easily invoked as these are least likely to have been fully within Parliament's contemplation. This analysis helps to reconcile the courts' insistence that there be a reserve of powers to ensure that their processes are protected and the apparently contrary insistence that their jurisdiction (and to some extent, their substantive powers) are statutorily constrained.

The concern that the courts must retain control over their processes has been often repeated. Thus, in Professor Pinsler's view, the word "inherent" suggests that the powers arise from the status and role of the court itself rather than from an external vesting source such as statutory law. This conclusion can be justified on the basis that the court must have a general or residuary source of powers beyond the confines of procedural rules to ensure that it has the appropriate authority to deal effectively with the abuse of its process, and that justice should never be compromised by the inadequacy of written law.¹⁹⁸ The point was well-stated by Chan Sek Keong J. (as he then was) in *Emilia Shipping Inc v. State Enterprises for Pulp and Paper Industries*¹⁹⁹ when he said that the court must, as "the master of its own process",²⁰⁰ have inherent power to refuse to entertain proceedings which constitute an abuse of process. Likewise, in the High Court decision of *Heng Joo See v. Ho Pol Ling*,²⁰¹ Punch Coomaraswamy J. accepted that "inherent jurisdiction"²⁰² involved "the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them",²⁰³ thus adopting the definition put forward by Sir Jack Jacob in his influential article.²⁰⁴

In cases concerning the exercise of the court's inherent procedural powers, there still is the assumption of implied exclusion through legislative silence,²⁰⁵ but it is much more easily rebutted. The "need" here does not perhaps go towards affecting the parties' lives or liberties; it is satisfied most probably and frequently where it will aid the court in disposing of matters conveniently and expediently. Perhaps it is going too far to say that such power only extends to cases not covered by statutory provisions,²⁰⁶ given the clear example of O. 18 r. 19 of the *2006 Rules* which co-exists with the courts' inherent power to strike out pleadings. Indeed, the Court of

¹⁹⁸ *Ibid.*

¹⁹⁹ [1991] 1 S.L.R.(R.) 411 (H.C.).

²⁰⁰ *Ibid.* at para. 23.

²⁰¹ [1993] 2 S.L.R.(R.) 763 (H.C.) [*Heng Joo See*].

²⁰² Or "inherent power" under the terminology employed in this article.

²⁰³ *Heng Joo See*, *supra* note 201.

²⁰⁴ Jacob, *supra* note 13 at 51.

²⁰⁵ *Sumikin Bussan Corp v. Hiew Teck Seng (alias Yaw Teck Seng)* [2005] 2 S.L.R.(R.) 773 (H.C.); *Lian Teck Construction Pte Ltd v. Woh Hup (Pte) Ltd* [2005] 1 S.L.R.(R.) 266 (H.C.); *United Engineers (Singapore) Pte Ltd v. Lee Lip Hiong* [2004] 4 S.L.R.(R.) 305 (H.C.) [*Lee Lip Hiong*]; *Chinese Chamber Realty Pte Ltd v. Samsung Corp* [2003] 3 S.L.R.(R.) 656 (H.C.) at paras. 14 and 15, upheld on appeal in *Samsung Corp (CA)*, *supra* note 5 at para. 12; *Four Pillars*, *supra* note 126.

²⁰⁶ Compare *Star-Trans Far East Pte Ltd v. Norske-Tech Ltd* [1996] 2 S.L.R.(R.) 196 (C.A.) at para. 47: "The court retains the inherent jurisdiction to order a stay of court proceedings in favour of arbitration. Nevertheless, the jurisdiction is a residual one, principally confined to cases not covered by the statutory provisions."

Appeal in *Obegi Melissa v. Vestwin Trading Pte Ltd*²⁰⁷ rejected the view that the time limit laid down in O. 14 r. 14 of the 2006 Rules “is an absolute one” and “may not be extended by the court”.²⁰⁸ Thus, whilst the assumption remains, it is plausible that Parliament is often content to leave what is effectively the governance of the courts’ procedural business to the courts themselves.

3. Requirement of “Need”

So far we have only dealt with the question of whether the exercise of a court’s inherent jurisdiction or inherent powers is expressly or impliedly excluded by Parliament. If it is not, we still have to answer the subsequent question of whether the court *should* exercise such inherent jurisdiction or inherent powers. This is the third stage of the test. The cases provide us with a suitable test: that of “need”. The test is a useful one because, as the Court of Appeal said in *Anthony Wee*, such a test does not unduly circumscribe the court’s recourse to such jurisdiction or powers to do justice.²⁰⁹ However, this test may be too broad. This article has tried to add some degree of complexity to this broad requirement of “need”, suggesting that there are different degrees of “need” depending on one of three categories.

However it is equally important to recognise that the test of “need” operates on two different levels: first, it operates in conjunction with the assumption of implied legislative exclusion through silence to rebut that assumption; second, it operates independently in the third stage as a substantive test to determine whether there is a need, absent legislative exclusion, for the exercise of inherent jurisdiction or power. The first use of “need” may be termed “specific need” since it is concerned with the specific question of whether there is legislative exclusion. The second use of “need”, in contrast, may be termed “general need” since this is concerned with the more general question of whether there is, nonetheless, a need to exercise that inherent jurisdiction or inherent power which has not been legislatively excluded.

Turning to the requirement of “need” in its specific role at the second stage, it must first be mentioned that the “need” required to rebut the assumption of implied legislative exclusion through silence is different as the strength of this assumption varies with each category. Thus, rather than function in isolation, the “need” test operates—in cases of potential implied legislative exclusion—in conjunction with the assumption and operates to answer the question, whether there is in fact such an exclusion. However, in the third stage proper, where the exclusion is rebutted, there is still a *residual* and general function of the “need” test as a substantive concern. This question is likewise informed by the category of jurisdiction or power which is exercised.²¹⁰

²⁰⁷ [2008] 2 S.L.R.(R.) 540 (C.A.).

²⁰⁸ *Lee Lip Hiong*, *supra* note 205.

²⁰⁹ *Anthony Wee*, *supra* note 154 at para. 27.

²¹⁰ The factors listed in Pinsler, “The Inherent Powers of the Court”, *supra* note 14 at 11-13, remain very helpful. These include, *inter alia*, that the need being of a sufficient degree to justify the exercise of the court’s inherent jurisdiction; that it will not be exercised merely to satisfy the party’s interest or desire; that such a need does not arise if there is a procedural mechanism (whether provided by statute or the Rules of Court) in place which effectively governs the circumstances; that the court may consider its own needs as, for example, whether it would be able to deliberate more effectively if it were to exercise

4. *No Pre-Requisite*

A very last point needs to be made: there is no prerequisite of “injustice” or “abuse” before the court’s inherent jurisdiction or inherent powers can be invoked, as has been suggested in some cases.²¹¹ These factors may fulfil the “need” requirement, but there are certainly other factors capable of doing the same.

C. *Testing the Proposed Test*

A recent decision of the Court of Appeal provides an opportunity to both test and illustrate the operation of the proposed test. In *Lee Tat Development (CA)*, Chan Sek Keong C.J., delivering judgment for a unanimous court, held that the Court of Appeal has the inherent jurisdiction to reopen and rehear an issue that it decided in breach of natural justice as well as to set aside (in appropriate cases) the whole or part of its earlier decision founded on that issue.²¹² In an important passage justifying its conclusion, the court said:²¹³

In our view, the CA *has* inherent jurisdiction to reopen and rehear an issue which it decided in breach of natural justice as well as to set aside (in appropriate cases) the whole or part of its earlier decision founded on that issue. If the CA (or, for that matter, any other court) has decided an issue against a party in breach of natural justice, it cannot be said that the CA was fully apprised or informed at the material time of all the relevant considerations pertaining to that issue, and, therefore, the CA cannot be said to have applied its mind judicially to that issue. In other words, the CA would not have exercised its jurisdiction properly *vis-à-vis* that issue, and, therefore, it cannot to be said to be *functus officio* in the sense of having exhausted its power to adjudicate on that issue. Nothing in the SCJA prescribes for this situation, and we see no justification to circumscribe the inherent jurisdiction of this court (which would be the effect if we were to rule that the CA has no inherent jurisdiction to reopen an issue which it decided in breach of natural justice) as that could potentially result in this court turning a blind eye to an injustice caused by its own error in failing to observe the rules of natural justice.

It is submitted that the proposed test accords with the reasoning adopted by the court in this passage. The first stage of the test asks whether there is any express prohibition of the inherent jurisdiction or power to be exercised. In *Lee Tat Development (CA)*, the inherent jurisdiction concerned was the authority of the court to effectively rehear an appeal already disposed of. According to the court, there was nothing in the SCJA which was prescribed for this situation. This must have meant two things. First, there was no express prohibition of the exercise of the inherent jurisdiction concerned.

its inherent jurisdiction; and that the court should not exercise its inherent jurisdiction merely because to do so would not cause prejudice to the other party.

²¹¹ *Westacre Investments Inc v. The State-Owned Company Yugoimport-SDPR (also known as Yugoimport-SDPR)* [2007] 1 S.L.R.(R.) 501 (H.C.); *Re Baring Futures (Singapore) Pte Ltd* [1995] 2 S.L.R.(R.) 757 (H.C.).

²¹² *Lee Tat Development (CA)*, *supra* note 3 at para. 55.

²¹³ *Ibid.*

Second, there was legislative silence otherwise on the permissibility of the exercise of such jurisdiction. This therefore invokes the second stage of the proposed test, *viz.*, whether there is implied legislative prohibition of such exercise through silence. If the language of the legislative provision implies a prohibition, the court would not be able to exercise such inherent jurisdiction. However, the case appears to be different in *Lee Tat Development (CA)*. There was no such implication by language, and so the sliding scale of presumption of legislative silence applies. Since the court was concerned with its inherent jurisdiction, this presumption would be very strong, although not irrebuttable. Here, the court saw a clear “need”—in its specific sense—for such an inherent jurisdiction, as an absence of such jurisdiction could “potentially result in [the] court turning a blind eye to an injustice caused by its own error in failing to observe the rules of natural justice”.²¹⁴ Although the legislative presumption of exclusion through silence is rebutted by such a strong “specific need”, the third stage of the test nonetheless requires the court to consider affirmatively whether there is a more general need to exercise such an inherent jurisdiction. As mentioned earlier, the test of “need” here applies similarly (but not identically) as in the second stage. This is aptly demonstrated by the Court of Appeal’s reasoning, which seems to regard the same reasons as satisfying the “specific need” requirement at the second stage and the “general need” at the third stage. This may be the practical outcome given the closeness of the “need” requirement in both stages, but it must be mentioned that the test of “need” serves different functions: it serves the specific purpose of rebutting a presumption in the second stage, whereas it serves affirmatively in a more general sense to convince the court to exercise its jurisdiction (or power) in the third stage. Nonetheless, this shows that the proposed test can explain what the courts have in fact been doing, without recourse to a broad (and vague) understanding of their inherent jurisdiction and/or inherent powers.

VI. CONCLUSION

To conclude, it must be said that in the past the courts have been satisfied with broad tests to identify the limits of their inherent jurisdiction and inherent powers. These tests may be workable, but their broad natures only serve to perpetuate the view that the courts’ inherent jurisdiction and inherent powers are incapable of precise definition. This article has questioned whether that ought to remain the case. It has been asked if we should continue to believe that the courts’ inherent jurisdiction and inherent powers are amorphous and ubiquitous, and therefore impossible to delimit precisely. Perhaps some demystifying is necessary. In this respect, this article has suggested an alternative approach towards ascertaining the limits of the courts’ inherent jurisdiction and inherent powers.

First, it questioned the fundamental understanding of what the courts have meant by their inherent jurisdiction and inherent powers. In this regard, and from the study of all the cases containing the expressions “inherent jurisdiction” and/or “inherent power(s)” decided after independence until July 2010, there have been deciphered the “authority” and “power” meanings. It is important to be clear about what we want to limit before asking how to limit it.

²¹⁴ *Ibid.*

Second, having identified the various meanings attributed to the expressions “inherent jurisdiction” and “inherent power(s)” by the courts, this article has suggested three broad categories with which to categorise the courts’ use of these expressions. The three categories are: the courts’ inherent jurisdiction, the courts’ inherent procedural powers and the courts’ inherent substantive powers. It may be a bit controversial to suggest that the courts have exercised inherent *substantive* powers when there have been express judicial pronouncements prohibiting this, but there is little other way of characterising some of the instances in which courts have invoked their inherent powers.

Third, this article suggested that each category admits of different concerns, which in turn affects the limits to be placed on the exercise of each by the courts. The problem with a blanket test of “need” or “justice” is that it suggests that the courts’ “inherent jurisdiction” or “inherent powers” consists of a uniform set of concepts concerning similar issues. The truth is that they do not. Recognising the distinct character of each category paves the way for a calibrated test based on the special circumstances and concerns of each. Thus this article suggests a three-stage test.

The first stage asks if there is express legislative exclusion of the courts’ inherent jurisdiction or inherent powers. If there is, there cannot be any exercise of such jurisdiction or powers. The second question asks if there is implied legislative exclusion. Implied exclusion through silence is usually the most difficult question. This article suggests a sliding scale of assumptions of implied legislative exclusion through silence. Because jurisdiction is something that Parliament is most concerned with, the assumption is harder to rebut compared to inherent jurisdiction. This is followed by the courts’ inherent substantive powers and then inherent procedural powers. The proposed order reflects the decreasing concern that Parliament may have in specifying and regulating the judicial exercise of an inherent version of such jurisdiction or powers; so that its silence is less and less interpreted as purposeful rejection. In other words, the implied legislative exclusion through silence is easier to rebut. In rebutting this assumption, the test of “specific need” is important: there will be a greater necessity for the jurisdiction or power concerned if the assumption is stronger. The third stage of the test then concerns the substantive application of “general need”: if there is no legislative exclusion, express or implied, the courts then ask whether there is nonetheless a “general need”. This question is then informed by the category of jurisdiction or power which is exercised.

This, in summary, is the alternative approach towards the limits of the courts’ inherent jurisdiction *and* inherent powers. In doing so, it is hoped that some way has been made towards understanding the topic of the courts’ inherent jurisdiction and inherent powers. Amorphous as these concepts may be, it is surely unsatisfactory if they are to become confusing and shrouded in myth as well. But more specifically, it is hoped that the suggestion of a three-step test delimiting the courts’ inherent jurisdiction and inherent powers will provide a more concrete means for the courts to apply the test of “need” in the specific situation before them. This in turn may lead to greater certainty and consistency for cases involving the courts’ inherent jurisdiction and inherent powers.