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BOOK REVIEWS

Singapore Trusts Law BY CHRISTOPHER **HARE** AND VINCENT **OOI**, eds. [Singapore: LexisNexis, 2021. lxv + 682 pp. Softback: S$320.57]

In recent years, a number of Singapore cases have come to the attention of common law trust lawyers outside Singapore. Particularly prominent has been *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (CA), where the Singapore Court of Appeal affirmed the dissenting judgement by Lord Neuberger in *Stack v Dowden* [2007] 2 AC 432 (HL), which significantly restricted the application of family home trusts in Singapore. Unsurprisingly, Singapore law's divergence from English law in this area has attracted the attention of local trust scholars, in particular Man Yip (see *Comparing Family Property Disputes in English and Singapore Law* (2021)) and Kelvin Low (see *Victoria Meets Confucius in Singapore* (2021)) who seek to explain how Singapore's socio-legal context might have led to these developments. More broadly, the emphasis on Singapore's distinctiveness as an equity jurisdiction reflects trends in the field since Yihan Goh and Paul Tan's *Singapore Law: 50 Years in the Making* (2015). As Justice Andrew Phang highlights in the preface to the present book, in recent years Singapore courts have shown an important "*attitudinal*" change to foster "the *spirit* of autochthony", which expresses itself above all in selecting best practice from across the Commonwealth and taking an independent direction where this is required.

Against this background, Christopher Hare and Vincent Ooi's book provides a strong and detailed coverage of the current state of Singapore trust law. While much of Singapore law remains faithful to its English moorings, there are also important differences. At the general level, in cases such as *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 (CA), Singapore courts have adopted a flexible approach to the development of equitable rules, which nonetheless must remain faithful to existing doctrine. Such an approach often involves a difficult balancing act. For example, in rules on the constitution of express trusts, Singapore is responding to challenges from its regional competitor Hong Kong, where s 3A of the Perpetuities and Accumulations Ordinance 2013 effectively abolished the rule against perpetuities. The opening of the door to non-charitable purpose trusts may lead to a general liberalisation of trust law which pushes the Asian financial centres in the direction of offshore trust jurisdictions. Similarly, although Singapore was not directly involved, Hong Kong's view of a trust over a bloc of shares as a proportionate interest in *Re CA Pacific Finance Ltd* [2000] 1 BCLC 494 (HC) found its way into Roy Goode's persuasive explanation in *Are Tangible Assets Fungible?* (2003) of *Hunter v Moss* [1994] 1 WLR 452 (CA), a case which was concerned with the certainty of subject matter for intangible assets. Goode's explanation was

later adopted by Briggs J (as he then was) in *Pearson v Lehman Brothers Finance SA* [2010] EWHC 2914 (Ch) (at [225] and [232]). These linkages demonstrate the latent ability of common law jurisdictions in Asia to contribute to the development of English law.

The recent literature on the socio-legal context of Singapore trust law—see, *eg*, Hang Wu Tang, *From Waqf, Ancestor Worship to the Rise of the Global Trust* (2019)—has highlighted the implications of the country's Asian cultural landscape. Such influences are the strongest in areas such as charitable trusts, where courts had to grapple with the question of whether religions which lack attributes taken to be important to the definition of religious practice can nonetheless be recognised as charities. For the most part, Singapore courts have adopted a pragmatic approach: see, *eg*, *Koh Lau Keow v Attorney General* [2013] 4 SLR 491 (HC) for Buddhist temples, and the English case of *Varsani v Jesani* [1999] 1 Ch 219 (CA) on Hinduism. Yet, the existence of a plausible analogy with existing English categories alone does not guarantee recognition: see, *eg*, *Sin Chew* rites of Chinese ancestral worship in *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381; *cf Kan Fat Tat v Kan Yin Tat* [1987] HKLR 516 (HC) in Hong Kong. Interestingly, s 64 of the Trustees Act 1967 does not require trusts to be exclusively charitable where charitable and non-charitable purposes can be disentangled. Given the importance of native succession mechanisms and religious institutions to the development of Singaporean trusts, it would have been interesting for the authors to reference the insights in Ying Khai Liew and Matthew Harding eds., *Asia-Pacific Trusts Law*, Vol. 1 (2021). The volume's essays on India and Hong Kong, in particular, have highlighted the assimilation of native trust-like institutions to the English trust and the appropriation of the English trust by wealthy local residents as two key features in the development of trusts in the colonial context. Furthermore, as Yip has noted in *The Presumptions of Resulting Trust Under Singapore Law* (2016), statute law often plays a particularly important role in the development of common law outside England, which means that it may merit analysis as a separate theme.

Like charity law, common law rules on the resulting trust and the common intention constructive trust bear the imprints of English cultural and moral norms. A good example can be found in the presumption of advancement, where English law has historically presumed that, for certain relationships such as that between a father (but not a mother) and a child, a voluntary transfer or a contribution to the purchase of property in another's name is intended as a gift. Despite the apparent conservatism of the rule, Singapore courts have affirmed its continuing relevance notwithstanding the rule's abolition in England under s 199 of the Equality Act 2010. In *Low Gim Siah v Low Geok Khim* [2007] 1 SLR(R) 795 (CA), Chan Sek Keong CJ stated that the "moral or equitable obligations" underlying the English presumption of advancement "do not change even if social conditions change" (at [43] – [44]). In *Lau Siew Kim*, the Court of Appeal stressed that the application of the presumption, which had been rejected in India, "must be considered against the backdrop of the particular community; there should not be a blind adherence or slavish application of the presumption simply to dovetail with the English approach" (at [60] – [65]). From this perspective, Singapore courts accept only a tempering of the rule by way of a relaxed approach to rebuttal evidence. *Low Gim Siah*'s endorsement of the presumption of a resulting trust also amounts to a departure from the

English preference for a common intention constructive trust. Thus, in the case of family homes, in Singapore the extent of beneficial interest is determined solely in relation to the time when the property was purchased and the trust created. In *Chan Yuen Lan*, the court reaffirmed Singapore law's direction in contrast to England, and commended in particular the clarity of Lord Neuberger's minority approach in *Stack*, which applied in both family and commercial contexts. *Chan Yuen Lan* leaves Singapore law in stark opposition to Lady Hale's emphasis on fairness, which the Court of Appeal saw as potentially unprincipled and arbitrary.

The Singapore courts' conservatism in relation to family home trusts contrasts with its approach to the remedial constructive trust, where courts have largely accepted the institution developed by Australian and Canadian authorities despite its rejection in England. In doing so, courts have distanced themselves from broad concepts such as "unconscionability", with Andrew Phang JA stating in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 (CA) that "'fairness and justice' are more properly conclusions which are arrived *at the end* of principled legal analysis, and *not as a substitute for that analysis*" (at [170]). Thus, remedial constructive trusts in Singapore apply only in a limited range of situations and are premised on fault where a recipient's conscience is affected while the property in question is still in her hands. Singapore courts also contributed to the development of the *Quistclose* trust by clarifying its underlying principles in *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 (HC), where the High Court adopted Lord Millett's reasoning in *Twinsectra Ltd v Yardley* [2002] 2 AC 164 (HL) and set out the rules for the trust's application. With respect to the imposition of a constructive trust over unauthorised commissions and bribes, in *FHR European Ventures LLP v Cedar Capital Partners LLC* [2015] AC 250 (SC) the UK Supreme Court elected to follow the Singapore High Court's decision in *Sumitomo Bank Ltd v Thahir Kartika Ratna* [1992] 3 SLR(R) 638 (HC), which departed from the English position at the time. Yet, it needs to be noted that *FHR* remains problematic to the extent that the UK Supreme Court has failed to explain why the interests of the breaching fiduciary's other creditors in the event of her insolvency should be postponed to the principal's claims: see Ben McFarlane and Charles Mitchell eds., *Hayton and Mitchell: Text, Cases and Materials on the Law of Trusts and Equitable Remedies*, 14th ed (2015) at para 13-196.

Hare and Ooi's judgements throughout the book are usually sound. The fact that the book is aimed primarily at local law students as well as practitioners explains the approach taken throughout, where detailed description of cases is accompanied by useful references to the wider secondary literature. In particular, the authors' interweaving presentation of theoretical debates with Singapore decisions are helpful. For example, the discussion of Andrew Phang JA's qualified support for Ben McFarlane and Robert Stevens's theory of "a right against a right" (see *The Nature of Equitable Property* (2010)) in *Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA* [2018] 1 SLR 894 (CA) (at [145] – [146]) elucidates the contentious debate's relevance to the current state of Singapore law. One quibble the present reviewer has relates to the authors' remark that Singapore and English law might have parted company in relation to *McPhail v Doulton* [1971] AC 424 (HL) on the certainty of objects. The conclusion is a little surprising given that, as the authors noted, *McPhail* has been cited with approval by Singapore courts, albeit

not in cases that dealt directly with the question of a discretionary trust's validity, and there is no *a priori* reason why a court would decide differently if it did.

In my view, a strong account of Singapore trust law ought to reflect critically on the country's post-colonial context, given that historical inequality in legal relations between England and its former colonies is a core dynamic in the development of common law. For example, it would be interesting to know whether Singapore law's continuing close adherence to English law in many areas (*eg*, compared to India, as noted in *Lau Siew Kim*) is largely the result of inertia, or whether it is the consequence of a pragmatic policy which reflects Singapore's unique economic position. In the same manner that English private law writings often highlight London's unusual role in transnational finance and dispute resolution, such strategic considerations—see, *eg*, Chief Justice Sundaresh Menon's Keynote Address at the Singapore Academy of Law and Chancery Bar Conference 2013, "Finance, Property and Business Litigation In A Changing World"—could be given prominence in a Singapore trusts textbook. As discussed above, clearer analysis on the role of statutes in facilitating Singapore law's divergence from England is potentially helpful, which in turn may invite consideration of the effects of neighbouring areas of law such as family, housing or commercial law on the trust's operation. Furthermore, while the authors' lucid presentation of Australian and Hong Kong cases is one of the book's strengths, it may be useful to have more regional discussion, for example the law of Malaysia which shares certain similarities with Singapore—see*, eg*, Ying Khai Liew, *Constructive Trusts and Limitation Periods in Malaysia* (2020)—as well as an indication of the ways in which leading textbooks in jurisdictions such as Australia may deal with the questions analysed. Finally, references to the comparative literature on intra-common law differences, and a bibliography of secondary literature, will help the reader connect Singapore law with wider global and regional trends: see, *eg*, Birke Häcker, *Divergence and Convergence in the Common Law* (2015) and Andrew Robertson and Michael Tilbury eds., *Divergences in Private Law* (2016).

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