CURRENT LEGAL RESEARCH IN SINGAPORE*

PRELIMINARY REMARKS

The terms of reference for this paper, as set out by the organising committee of this Conference,[1] are to "report on current or recent legal research activities as well as on planned programs and long-term developmental plans. Special attention should be paid to any research conducted on ASEAN legal systems and on any plans for developing ASEAN comparative law."

In one sense, legal research is undertaken by those who teach by those who practise and by those who judge. While not underestimating the importance of such research, I will focus attention on research with certain objectives, and which research is published or intended for publication.

At the outset, it must be mentioned that there is no organisation in Singapore which is devoted to legal research on a full-time basis such as, for example, the National Law Development Centre, Indonesia[2] and the University of the Philippines Law Center, Philippines.[3] Legal research in Singapore has virtually been conducted by a few (alas, too few) law teachers, and even fewer legal practitioners and government legal and judicial officers. Without any specific orientation which an organisation devoted to legal research and publication would have, research has also tended to be geared to the individual researcher's perceived priority, rather than to the priorities which the Singapore legal system and its economic, social and political developments demand. However, the need to research into and to co-ordinate research efforts in certain areas is beginning to be recognised.

Before examining the current or recent legal research activities in Singapore, it is well to map out the areas which demand priority and which no legal researcher in Singapore can afford to overlook. There are three main types of research, which are not mutually exclusive, that ought to be considered. The first type of research should aim at bringing about an integrated and homogenous legal system;[4] the second, at an evaluation of the laws to see how far they hinder or promote the economic, social and political developments of Singapore today; the third, at a comparative study of the laws in the other

* Paper delivered at the *Conference on Legal Development in ASEAN Countries,* held in Jakarta, Indonesia, 6th-10th February, 1979.

1 The Conference was organised by the National Law Development Centre of the Ministry of Justice, Indonesia.

2 *On and About the National Law Development Centre, Ministry of Justice, Republic of Indonesia* (1977).

3 See, F. Bacungan, "Law and Development in the Philippines: Some Institutional Alternatives" [1977] JMCL 139.

4 See, G.W. Bartholomew, "The Singapore Legal System" in Hassan (ed.), *Singapore: Society in Transition* (1976), 84-112.

ASEAN States. This Conference itself demonstrates the need for such research.

RESEARCH AND THE DEVELOPMENT OF THE SINGAPORE LEGAL SYSTEM

The Singapore legal system, like the legal system in all the other ASEAN countries, is not autochthonous. Like most, if not all, countries with a colonial past, the legal system in Singapore has by and large been developed through reception, imposition and borrowing from her colonial master—.England.

Although today many of our laws are found in statutes passed by Our legislature and its predecessors, there still exist omnibus reception provisions, as well as "saving clauses" which receive English law into Singapore. 1 shall briefly consider the effect such a reception provision can have on the legal system in order to see the task which faces the legal researcher in Singapore.

The genesis of the modern legal system in Singapore can be said to date from November 27, 1826 when Letters Patent, issued by the British Crown under the authority of an Imperial Act,[5] commonly referred to as the Second Charter of Justice, introduced English law as it stood on that date subject to such modifications as were necessary to prevent injustice or oppression to the local inhabitants.

While there now exist many local statutes which render reception of English law unnecessary, nonetheless there are important areas such as the law of contract, tort, equity, to name a few, where English law is still applicable, apart from some local statutory modifications. At first sight the application of English law seems simple enough, as there is a plethora of legal literature on English law. It would thus seem that the task is made simple for those in Singapore who have to administer or teach those areas where English law is received into Singapore. But therein lies a fallacy. We cannot always rely on English law without question: the consequences can be disastrous as any law teacher in Singapore will tell you. For even in those areas where English law is received, there may be "local circumstances" which require some modifications. As the Master of the Rolls of England, Lord Denning observed in *Nyali Ltd.* v. *The Attorney General,*[6] a case from Kenya where a similar reception provision exists:[7]

> . .. that the common law is to apply 'subject to such qualifications as local circumstances render necessary.' This wise provision should, I think be liberally construed. It is a recognition that the common law cannot be applied in a foreign land without considerable qualification. Just as with an English oak, so with the English common law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed but it needs careful tending. So with the common law. It has many principles of manifest justice and good sense which can be applied with advantage to peoples of every race and colour all the world over: but it has also many refinements, subtleties and technicalities which are not suited to other folk. These off-shoots must be cut away. In these far off lands the people must have a law which they understand and which they will respect.

5 5 Geo. IV c. 85.
6 [1955] 1 All E.R. 640.
7 *Ibid.,* at p. 653.

> The common law cannot fulfil this role except with considerable qualifications. The task of making these qualifications is entrusted to the judges of these lands. It is a great task. I trust that they will not fail therein.

Unfortunately, judges have sometimes displayed their timorous souls and have failed to take up the challenge. The task, I may add, is not upon judges alone, but upon counsel, the *legal researcher* and those, who are, in one way or another, involved in the administration of the law. There is great scope for the legal researcher to examine judgments to see whether a court has overlooked "local circumstances", whether a slavish adherence to English law has stifled legal development and produced unsatisfactory solutions. One example where a Singapore court rigidly adhered to a common law rule without due regard to the conditions of our society (which has different mores) is demonstrated by *Choo Tiong Hin* v. *Choo Hock Swee*.[8] The respondent adopted five sons who helped him work his farm and in various other enterprises. Subsequently, differences arose and the respondent left his family house. He then brought an action against three of his adopted sons and two of his grandsons claiming possession of the farm and family house and damages for trespass. He also claimed a declaration that he was the beneficial owner of a petrol-filling station, and the return of two lorries used on the farm. The Court, following the English decision in *Baljour* v. *Balfour*[9] held that the law would not imply an intention that a family arrangement between the father and his adopted sons should be attended by legal consequences.

In order to appreciate the undesirability of this position it is necessary to understand the exact relationship between the adopted sons and the father. The sons were adopted at an age when they were already of mature years and the arrangement was not attended by any sentimental western connotations. It was of mutual benefit and in fact could be likened to a contract of service. The situation was quite different from that of *Balfour's* case where the English Court of Appeal held that the arrangement in question between a husband and wife fell into the category of domestic arrangement which was not intended to create any relations. The arrangement in *Choo Tiong Hin's* case was not inspired by any sense of filial piety giving rise to a 'domestic arrangement,' but was rather a serious business proposition intended to create legal relations. It is therefore unfortunate that the Court failed to look behind this sort of 'family arrangement', which is so common among the Chinese.

Even where the interpretation of a local statute need not call in aid any English rule (as the law may be different) it is not unknown that the Bench and Bar have sometimes relied on English authorities which have no relevance but instead led to confusion. However, there were a few judges who appreciated the dangers. For example, Murray-Aynsley, a former Chief Justice of Singapore, warned against the indiscriminate reliance on English cases in criminal law. The learned Chief Justice said in *Vincent Lee* v. *R.*:[10]

> It is to be regretted that the use of the word 'extortion' in this connection, which is very different from the technical use in English law... has led

8 [1958] M.L.J. 67.
9 [1919] 2 K.B. 571.
10 [1949] M.L.J. 296.

> to confusion. It will be seen that the authorities cited in the commentary both in Gour and Ratanlal are mostly English cases and they are examples of offences very different from that defined in the section.

Despite the warning in 1949 in the above case, the learned Chief Justice had to reiterate his warning in another criminal law case in 1954. In *Woo Sing & Sim Ah Kow* v. *R.*[11] he pointed out to counsel that

> The Penal Code is not a codification of English law. In numerous respects its provisions resemble the corresponding English law. In others,... its provisions differ very greatly and deliberately so. In my opinion it is always dangerous to introduce English cases into the consideration of the Penal Code.

The above cases are but a few which serve to illustrate the slavish adherence to the English common law in areas where our courts could have developed a homogenous and integrated system and indeed where the statute itself so required. The position today has not improved very much. The reluctance to modify the common law to suit local conditions, or to interpret a local statute free from the fetters of English legal concepts, may in part be due to the fact that, until the Law Faculty was set up in 1956, administrators of the law have had their legal training in England. Also, and perhaps a more important factor, is the dearth of local legal literature. As G.W. Bartholomew put it: "It is only when legal writers, thinking about the system as a whole, attempt to expound it as a whole, that a coherent and integrated system can begin to emerge; it is only then that the law will become a system and not just a collection of bits and pieces borrowed from various places."[12] Even today, the state of legal literature in Singapore leaves much to be desired. There is the much-consulted, though out-dated Braddell's *The Laws of the Straits Settlements: A Commentary,*[13] in two volumes. The next general sketch, dealing with some of the main areas of the law of Singapore is to be found in *Malaya and Singapore, the Borneo Territories: The Development of their Laws and Constitutions,*[14] being volume 9 of *The British Commonwealth* series published in 1961. Again, quite apart from a very sketchy outline on some areas of Singapore law it is out of date in many respects. There is a need in many areas of the law to state what the law is even before we can examine it critically.

In 1976 the Law Faculty, University of Singapore, embarked on the *Singapore Law Series* to meet the long-felt need for an up-to-date introductory survey of the main areas of the law of Singapore. In each volume an outline of basic principles is given and, where necessary, the problem areas are highlighted. What is particularly useful is that the sources of the law under study are set out. In other systems the sources of law may be clear enough, but this is not always so in Singapore, where the question may engage the time and energy of those who try to locate such sources or to determine whether they are part local law, part English law, or, if there are express local provisions, the extent to which English law is applicable under the reception provisions.

11 [1954] M.L.J. 200.
12 G.W. Bartholomew, *op. cit.,* p. 108.
13 2nd ed. 1932, Vols. I and II.
14 LA. Sheridan (ed.), 1961.

To date, the following titles in the *Series* have been published: S. Jayakumar, *Constitutional Law (with documentary materials);*[15] Kenneth Wee *Kim* Seng, *Family Law;*[16] Koh Kheng Lian, *Criminal Law;*[17] James Wong C.K.K., *Shipping Law;*[18] Myint Soe, *Banks and Banking;*[19] Philip N. Pillai, *Legal Framework of Business Organisations;*[20] Philip N. Pillai, *Company Law.*[21] Other titles contemplated by the *Series* include Conflict of Laws, Administrative Law, Law of Taxation, Land Law, Law of Torts, Law of Contract, Consumer Credit Law, Labour Law, Criminal Procedure, Civil Procedure, Law of Evidence and The Legal System. It is hoped that the *Series* will be completed by the end of 1981. However, the *Series* will serve only a limited purpose as it gives only a conspectus of some of the areas of law in Singapore. But what is more important is that it is hoped that the *Series* will be harbingers of more detailed studies and from them will emerge textbooks which may alter the course of judicial thinking and create a legal culture of our own.

The Braddell Memorial Lectures,[22] instituted in 1970 by the Law Faculty, University of Singapore have produced two interesting aspects of Singapore law, *viz.:* Ahmad bin Mohd. Ibrahim, *Towards a History of Law in Malaysia and Singapore*[23] and David Marshall, *Reform of our Criminal Procedure — Lessons from Comparisons between the Accusatorial and Inquisitorial Systems.*[24]

Recent years — 1974 to 1977 — have also seen the publication of a number of casebooks and sourcebooks, The areas covered are constitutional law,[25] international law (covering cases from Singapore and also Malaysia),[26] criminal law,[27] company law,[28] insurance law,[29]

15 Koh Kheng Lian (ed.), Singapore Law Series No. 1 (1976).
16 Koh Kheng Lian (ed.), Singapore Law Series No. 2 (1976).
17 Koh Kheng Lian (ed.), Singapore Law Series No. 3 (1977).
18 Koh Kheng Lian (ed.), Singapore Law Series No. 4 (1977).
19 Koh Kheng Lian (ed.), Singapore Law Series No. 5 (1978).
20 Koh Kheng Lian (ed.), Singapore Law Series No. 6 (1978).
21 Koh Kheng Lian (ed.), Singapore Law Series No. 7 (1979).
22 The Lectures, given annually, are intended to commemorate the late Sir Roland Braddell, a legal practitioner in Singapore. Braddell had contributed much to the legal development of the Straits Settlements through his legal writings. The lectures are delivered in alternate years in Singapore and Malaysia. When delivered in Malaysia they are known as the Tun Abdul Razak lectures.
23 1970. This was the inaugural Braddell Memorial Lecture.
24 Published under the title "Facets of the Accusatorial and Inquisitorial Systems" [1979] 1 M.L.J. xxix.
25 S. Jayakumar, *Constitutional Law Cases from Malaysia and Singapore* (2nd ed. 1976).
26 S. Jayakumar, *Public International Law Cases from Malaysia and Singapore* (1974).
27 Koh Kheng Lian and Myint Soe, *The Penal Codes of Singapore and States of Malaya: Cases, Materials and Comments* (Vol. I) (1974); and Koh Kheng Lian and Molly Cheang, *The Penal Codes of Singapore and Malaysia: Cases, Materials and Comments* (Vol. II) (1976). Note the slight change of title in Vol. II. This is because the States of Malaya Penal Code (F.M.S. Cap. 45) was extended throughout Malaysia by the Penal Code (Amendment and Extension) Act 1976 (Laws of Malaysia, Act A327).
28 Philip N. Pillai, *Sourcebook of Singapore and Malaysian Company Law* (1975). See also, *First Supplement* to the book (1976); *Second Supplement* (1979).
29 Myint Soe, *The Insurance Law of Singapore and Malaysia: Cases, Materials and Comments* (2nd ed. 1977).

banking law[30] and securities regulation.[30a] These books provide the "raw materials" which could be useful as a basis for future research. After all, the collation of cases, articles and other materials represents the embryonic stage of any legal writing.

In this context mention must be made of the compilation of an index to "local" legislation, *Tables of the Written Laws of the Republic of Singapore 1819-1971*[31] (Vol. I). The importance of this compilation to a legal researcher justifies a detailed information as to its contents which consists of:

A. Chronological Tables comprising:

1. a chronological table of the Straits Settlements Acts and Ordinances passed between 1st April 1867 and 15th February 1942 showing those in force on 28th February 1971;
2. a chronological table of Proclamations, Decrees and Notices issued by the Japanese Military Administration between 15th February 1942 and 15th August 1945;
3. a chronological table of Proclamations issued by the British Military Administration between 15th August 1945 and 31st March 1946;
4. a chronological table of Singapore Acts and Ordinances passed between 1st April 1946 and 28th February 1971 showing those in force on 28th February 1971;
5. a chronological table of Malaysian Acts and Ordinances extended to or applicable to Singapore indicating those which were still in force on 28th February 1971;
6. a table of the Chapter titles of the 1955 revised edition showing which chapters were in force on 28th February 1971; and
7. a chronological table of reprints issued under the Interpretation Act 1965 sec. 38.

B. An alphabetical table of unrepealed Acts and Ordinances of the Straits Settlements, Singapore and Malaysia applicable in Singapore as of 28th February 1971 showing in relation to each Act or Ordinance listed all amending legislation whether statutory or subsidiary and including all Acts and Ordinances passed by the Singapore Parliament before 28th February 1971 but not brought into force by that date.

C. A table of the unrevoked subsidiary legislation made under the Straits Settlements, Singapore and Malaysian Acts or Ordinances as of 28th February 1971 arranged under the Act or Ordinance under which they were made and showing in each case the section or sections under which they were made and, in those cases in which the Act or Ordinance under which they were made has been repealed, the corresponding section of the current Act or Ordinance (if any).

30 Myint Soe, *A Sourcebook on Banking Law in Singapore and Malaysia* (1977).
30a Tan Pheng Theng, *Securities Regulation in Singapore and Malaysia* (1978).
31 E. Srinivasagam & Ors. (Compilers), 1972.

It was up-dated by annual cumulative supplements between 1972-1977. However, no further supplements have been published due to lack of buying support. The Malaya Law Review, which is the publisher, cannot afford to bear the cost of publication.

Apart from the above casebooks, sourcebooks and the compilation of legislative index, three important studies on substantive law were published between 1977 and 1978: Myint Soe, *Law of Banking and Negotiable Instruments in Singapore and Malaysia* (1977); Chandra Mohan, *Bail in Singapore* (1977); Myint Soe, *The General Principles of Singapore Law* (1978). These books mark a breakthrough in local legal writing — from case notes, articles, casebooks, sourcebooks to textbooks and specific legal studies.

Conscious of the need to develop a body of local legal literature, the Malaya Law Review[32] in July 1977 suggested a number of ways of encouraging more writing on local law. The Editorial Committee was reorganised with the entrusting of specific portfolios to the members. As a result the "Legislation List and Comment" and "Notes of Cases", which were then almost moribund, were revitalized with more comments on local legislation and case notes. Of significance is the introduction of a new section "Singapore and International Law". Its objective is to reproduce materials and information that will illustrate Singapore's attitude to, and approaches on, questions of international law and international organisations. The coverage includes selected materials on *Policy Statements, Legislation, Judicial Decisions, Treaties, Asean Treaties, Declarations and other Instruments,* and *Singapore in the United Nations and other International Organisations and Conferences.* Hitherto, some of these materials were not documented nor were they readily available. It is hoped that this section will provide the necessary "raw materials" for a legal researcher on Singapore and International Law. As from the July 1979 issue, the Review will publish a summary of important unreported cases with comments where necessary. Here again the Review is attempting to fill a need to make available the "raw materials" for research purposes.

One of the ways of encouraging publication on current issues is to organise seminars and publish the proceedings. The seminar on *Law of International Transactions: Some Aspects of Transnational Enterprise Investment in Singapore,* held on 2nd and 3rd September, 1977 was organised by the Law Faculty. The proceedings were reported in the December 1977 issue (lst-3rd sessions of the proceedings) and the July 1978 issue (4th-5th sessions of the proceedings) of the Malaya Law Review. Although one cannot expect papers presented at seminars to entail detailed research, as one would expect of an article submitted for publication in a periodical, nonetheless, they are important in that they provide a springboard for discussion which can lead to more detailed studies. If local research is to be forthcoming it has to come also from outside the Law Faculty, as the Faculty at present has only about twenty-two full-time staff members. Efforts are being made to get contributions from legal practitioners and from legal officers in the Government. Another seminar is being planned sometime in 1979, with participants from legal practitioners, government legal officers and legal academics: the proceedings will, hopefully, be published.

[32] The Review is a biannual publication of the Law Faculty, University of Singapore.

Another way in which research can be directed to local jurisprudence is to encourage higher degree students to research into an area of local law. Of the eight LL.M. candidates currently registered at the Law Faculty it is encouraging to note that five are researching in the area of local law. The topics are *Some Aspects of Consumer Protection Law in Singapore; Ship Financing in Singapore: A Legal Analysis of the Securities; Insider Trading in Singapore; The Law Governing Parent-Child Relationship in Singapore; The Rights of Dispossessed Land Owners under the Land Acquisition Act (1966).* Mention must also be made of two graduates from the Law Faculty, University of Singapore, who did their Ph.D. abroad on some aspects of Singapore law. Phang Sin Kat obtained his Ph.D. from Monash University, Australia, in 1977, for his thesis *Import Trust Receipts in Victoria and Singapore.* Lee Chin Yen obtained her Ph.D. from King's College, London University, England, in 1978, for her thesis *Consumer Credit and Security Over Personalty — The Law in Singapore.* Both theses are being revised for publication in Singapore.

The Malayan Law Journal (which is essentially a report of cases decided in Singapore and Malaysia) is bringing out a special issue in 1979 on *Twenty Years of Legal Development in Singapore.* This issue is to commemorate the 20th anniversary of self-government in Singapore. Contributors to this issue are expected to include members of the judiciary, the legal service, members of the Bar and legal academics.

Perhaps the judges in Singapore are the ones who can make the greatest contribution in bringing about a homogeneous legal system. There are, regrettably not very many written judgments. This is one reason why there are not many reported decisions. The other reason is that the only law reporter in Singapore only publishes written judgments but does not report on cases decided in the courts. It is when we have a written judgment on every case where some points of law are involved, that there will begin to emerge a corpus of law that is truly "Singapore law." It is only when judgments are written and reported that the legal researcher can find his raw materials. The legal practitioner, too, has an important role to play. By careful research, he can assist the court in finding solutions to novel situations. And his researches may find a place in the reasoning of the court. In this context, it may be desirable for judges to have research assistants,[33] as they do in the Supreme Court in the United States.

Proceeding from the premise that until judgments are written and reported, the legal system will be stunted, there is a need also to report judgments from the subordinate courts — at least the District Courts, particularly since the jurisdiction of these courts has been increased over the last few years. At present, only written judgments of the High Court, Court of Appeal, Court of Criminal Appeal and Privy Council are reported. Although District Court judgments are not binding on any court, what is important is that a corpus of law will develop and that this will help to contribute to the development of an 'independent' and integrated legal system in Singapore.

[33] See Robert Fabrikant and Herbert Morais, "Judicial Clerkship: A Proposal" [1971] 2 M.L.J. 1x.

RESEARCH AND DEVELOPMENT: EVALUATION OF LAWS IN THE CONTEXT OF ECONOMIC, SOCIAL AND POLITICAL DEVELOPMENT

Research under this heading is directly concerned with "Law and Development" (LD). Applying the taxonomy adopted by the International Legal Center (ILC), LD research "at its best should be seen as transcending doctrinal study and as a continuation of widespread tradition of thought about law that includes such 'schools' as legal realism, sociology of law and sociological jurisprudence; law, science and policy,... ."[34] In other words, it deals with the social and policy perspective on law.

LD research can be subdivided into "applied research" and "basic research." On applied research the ILC monograph states: *"Applied research* is addressed to the resolution of immediate policy issues. Much applied research will be commissioned by policy makers who seek answers needed to resolve immediate needs, but individual scholars may conduct applied studies on policy issues they perceive to be of immediate importance."[35] On "basic research," the ILC monograph states: *"Basic research,* on the other hand, aims primarily at creating a body of knowledge about the legal order. It aspires towards a fuller understanding of the social role of law, the effectiveness and limits of legal action, and the social factors that affect or determine the nature and function of law."[36] Basic research, which is required for applied research, overlaps with research which aims at the development of the Singapore legal system, as discussed earlier. There is thus an overlapping, though for convenience, I am discussing the two separately.

As with the other ASEAN countries, Singapore is forging ahead with its industrialisation programme, which began in 1961. It is also becoming a financial centre; as a member of ASEAN it is working towards closer economic ties with the other ASEAN countries; and as a member of the United Nations it is participating in many UN activities, particularly the drafting of a new law of the sea and the unification and harmonisation of trade law by UNCITRAL.

Law can be used as an instrument of economic, social and political change. But first, existing laws must be examined to see if they are adequate or whether they are out-dated and act as constraints on the progress of economic, social or political development. When Singapore became an independent Republic in 1965 and when the British forces withdrew from the Republic in 1969, a heavy burden was placed on the Government to put Singapore economically on its feet. It did foresee this role in 1961 when the industrialisation programme was launched. Singapore was then only an entrepot port. Development financing was relatively unknown before 1960, as all that entrepot trade required was short-term financing for stock carrying. Very different was the position from 1961 onwards, when the Government

34 International Legal Center (New York), *Law and Development: The Future of Law and Development Research* (1974), p. 20. This is a report of the Research Advisory Committee on Law and Development of the International Legal Center.

35 *Op. cit.,* p. 26.

36 *Op. cit.,* p. 27.

launched its industrialisation programme. There was a tremendous demand for long- and medium-term finance as well as a greater demand for working capital. New and special problems arose, both in the supply of credit and in the security arrangements between the financer and the entrepreneur. New financial institutions were set up to channel funds into industries and expanding enterprises. The existing financial institutions were also playing their role in the provision of development finance. Legal regulation of these institutions became necessary to provide a sound financial policy and at the same time to protect the interests of depositors. A security arrangement is invariably entered into between the financer and the entrepreneur, and different types of entrepreneurs require different methods of financing. The present security law in Singapore has never really been geared to the needs of development financing. Most of such laws were modelled on English legislation of the last part of the 19th century, and these were more concerned with consumer financing. Consequently, the security law is, in some respects, unrealistic, cumbersome and inadequate to meet the needs of development financing. A study was made and published in 1973 on *Credit and Security in Singapore: The Legal Problems of Development Finance.*[37] The aim of the book is to examine and evaluate the legal framework in the light of current industrial development and to investigate the extent to which the legal system generally and security laws in particular operate as a constraint upon the free flow of development finance. Case studies were made of the major areas of development, *viz.* exporting and importing, manufacturing, the building industry and marketing outlets. The Singapore volume is one of a series prepared under the aegis of LAW ASIA (the Law Association for Asia and the Western Pacific) and the Asian Development Bank. Other volumes in the *Series* include the other ASEAN countries, *viz.* Indonesia, Malaysia, the Philippines and Thailand. The volume on Malaysia is expected to be published soon. When complete the *Series* will provide a comparative study of the credit and security laws among the ASEAN countries (and also of other regions) and will provide important information for lawyers, businessmen, bankers, and economists who are concerned with the twin problems of investment and development in those countries.

As Singapore continues assiduously to attract the foreign investor into its industrial-fold, the time seems opportune to take stock of those areas of the law that directly affect the foreign investor to see whether the law has hindered or promoted investment, whether foreign or, for that matter, local. As mentioned earlier, in 1977, the Law Faculty, University of Singapore, organised a seminar on the *Law of International Transactions: Some Aspects of Transnational Enterprise Investment in Singapore.* Participants were drawn from various groups consisting of academic lawyers, legal practitioners, lawyers in the government legal service and other government agencies, bankers, accountants and economists. Topics included "Transnational Corporations in the Singapore Context", "Some Legal Problems of Singapore as a Financial Center", "Legal Requirements for the Establishment and Conduct of Banks, Merchant Banks and Finance Companies", "Off-shore Banking and 'Liability Management' ", "Tax Implications and the Asian Dollar Market", "Income Tax Strategies in the Singapore and Asian Dollar Market", "Singapore's Foreign

37 Koh Kheng Lian, David E. Allan, Mary E. Hiscock and Derek Roebuck.

Investment Laws and Labour Legislation", "Some Aspects of an Investment Guarantee in Singapore", "Current Issues and Problems Affecting Taxation" and "Regulatory Aspects of Off-shore Lending to Indonesian Corporate Entities".

The growing concern for LD research can also be seen in the participation by lawyers in seminars organised by non-legal professional groups, but where law features in their profession. For example, in a seminar on *The Chartered Secretary in Singapore* organised by the Singapore Association of the Institute of Chartered Secretaries and Administrators (3rd and 4th September, 1976) two legal papers were presented, *viz.* "Take-overs and Mergers in Singapore" and "An Approach to International Tax Planning".

The above seminar papers serve as springboards for very interesting discussions on current and crucial issues involving an amalgam of law, politics, economics, banking, accountancy and commerce. There is a real need for dialogue on contemporary issues involving, *inter alia,* economics, commerce and politics facing Singapore.

As already noted, the Second Charter of Justice 1826 introduced English common law rules and equity subject to local circumstances — a rider which permits flexibility and provides a challenge to administrators of the law in working towards an independent, (although common-law based) legal system for Singapore. It also requires a legal researcher to keep a constant watch to see that courts do not adhere too rigidly to English common law without giving due regard to local circumstances. Very different is the task demanded of the legal researcher under section 5(1) of the Civil Law Act[38] which reads:

> In all questions or issues which arise or which have to be decided... with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally *the law to be administered shall be the same as would be administered in England in the like case at the corresponding period if such question or issue had arisen or had to be decided in England, unless in any other case other provision is or shall be made.*

Singapore became a sovereign Republic in 1965 and has its own legislature. Yet in all questions or issues relating to "mercantile law", together with specific areas mentioned in the section, the law to be applied is not confined to the commercial law but the "law" of England at the corresponding period. Thus the United Kingdom Parliament continues to legislate for us although it cannot have any due regard to the conditions obtaining here. Apart from the political absurdity of being tied to the apron-strings of her former colonial master the continued reception (subject to the local provision clause) renders the administration of commercial law uncertain and complex. The scope of section 5(1) has been the subject of controversy: the extent of the application of English law, including statutes, is not always easy to determine. It involves, *inter alia,* a determination of whether there is local provision — even if there is, it has to be determined whether the local provision is so exhaustive as to exclude English law on the subject. Thus, the law in a given area may not be found in one statute but a number of statutes, local as well as

[38] Cap. 30, Singapore Statutes, Rev. Ed. 1970. Italics added.

English, and perhaps overlaid with the English common law. Section 5(1) requires a constant check on what legislation is being passed in England and what reforms are taking place there.

Yet, there is not even any notification in the Singapore Government Gazette as to what relevant legislation is being enacted in England. That apart, English legislation and statutory instruments are not easily and readily available here. The result is that a practitioner may be advising on out-dated law. As from July 1978 the Malaya Law Review attempts to give a selected list of statutes passed in England which might be received under section 5(1) of the Civil Law Act and other reception provisions. But the Review does not find its way to every practitioner's bookshelves, nor to others who are involved in the administration of the law. What is becoming more and more anomalous is that England is now undergoing tremendous changes in the area of commercial law which are set against the background of current social policies and economic conditions, and with the impact of the EEC. The implications and ramifications of these reforms, which cannot take into account the conditions in Singapore, may render the application of these laws anomalous and irrelevant in the Singapore context.

It seems clear that the time is opportune for a repeal of section 5(1) at least in so far as statute law is concerned. A team of full-time legal researchers should be employed to examine what English legislation should be tailored to apply to Singapore. The task is considerable. For, that apart, we have to see what reforms ought to be made in Singapore itself, particularly in the area of commercial law like consumer protection, consumer credit, law of security, company law, to mention a few. Also, a study ought to be made as to the implications of the various areas of international trade law undertaken by UNCITRAL on Singapore and on ASEAN.

Before leaving this section it ought to be mentioned that one of the important areas of research in a developing country is the state of legal education: does it meet the needs of a changing society? Such research should be conducted at least once every few years, to see if circumstances have changed and whether the law school is providing the right kind of training to service not only the legal profession but other sectors as well. The Law Society has recently embarked on such research and will be making its recommendations soon. A few members of the Law Faculty are also about to embark on a similar project but it is understood that the terms of reference may be wider.

RESEARCH ON ASEAN LEGAL SYSTEMS

This year marks a decade of ASEAN. This is the first ASEAN conference on law which aims at introducing the various ASEAN legal systems to one another and to provide for the exchange of information. In 1972 the Law Faculty, University of Singapore, was aware that the time would soon come when each ASEAN member must acquaint itself with the legal systems and developments of the other ASEAN countries. In November 1972 a colloquium was organised by the Law Faculty, University of Singapore, on *Indonesian Company Law*. Participants were drawn from academic and practising

lawyers from Indonesia as well as from Singapore. In 1973 another colloquium was held in Singapore on *Comparative Aspects of Commercial and Income Tax Law.* As a follow up our Indonesian friends responded in February 1974 by organising a workshop on *Legal Education in Indonesia and in Singapore* held in Airlangga University, Indonesia. Participants were again drawn from the two territories. In the same year, in November 1974, a seminar on *Some Aspects of Singapore Law* was held at the Law Faculty, University of Indonesia. The papers presented at this two-day seminar were, "The Legal System in Singapore", "Financing Industry and Trade", "Some Aspects of Business and Consumer Securities" and "Some Aspects of Corporate Financing". We hope that in the not too distant future, provided financial assistance is forthcoming, we will have a dialogue with our other ASEAN partners, *viz.* the Philippines, Thailand and Malaysia.

Of our ASEAN fraternity, our legal researchers have ventured most into Malaysian law. This is because of the close historical and political ties of the two territories. In fact, until the Faculty of Law, University of Malaya, Malaysia, was set up in 1972, the Law Faculty, University of Singapore provided one of the routes for the training of lawyers for Malaysia. As such, the courses offered included studies on Malaysian law. This has led to publications by law graduates of the University of Singapore on Malaysian law. Not the least important is David Wong's *Tenure of Land Dealings in the Malay States* (1974). Dr. Wong was a graduate of the Law Faculty, University of Singapore who did his Ph.D. thesis (on which the book is based) in London University. Singapore and Malaysia share the same common law traditions, and many of our statute laws are *in pari materia.* When Singapore was part of Malaysia, some areas of the law, *e.g.* banking law, constitutional law, were the same for both territories. Even today, parts of the Malaysian Constitution are applicable in Singapore. It is interesting to note that three members of the Law Faculty, University of Singapore, contributed some chapters to the recent book, *The Constitution of Malaysia — Its Development: 1957-1977*[39] (editors, Tun Mohamed Suffian, H.P. Lee and F.A. Trindade). They are R.H. Hickling, "An Overview of Constitutional Changes in Malaysia: 1957-1977" (Chapter I); V.S. Winslow, "The Public Service and Public Servants in Malaysia" (Chapter 12); S. Jayakumar, "Emergency Powers in Malaysia" (Chapter 14). That research has tended to include both territories is evident from the sourcebooks and casebooks on constitutional law, international law, penal codes, company law and banking law which cover cases and materials from the two territories. These books are written by some law teachers of the Law Faculty, University of Singapore.

The Malaya Law Review from its inception in 1958 until recently (with the appearance of the *Jernal Undang Undang* in 1974, published twice yearly by the Faculty of Law, University of Malaya), had attempted to provide a forum for the publication of articles, comments and notes on Singapore and Malayan/Malaysian law on an equal emphasis. Over the last twenty years there have been many legal articles written on Malayan/Malaysian law. Indeed, it seemed

[39] Published in 1978.

quite unthinkable to examine the laws of Singapore without considering their counterparts in Malaysia. On the other hand, we have not as yet had such close legal affinity with other ASEAN countries, *viz.* Indonesia, the Philippines and Thailand. It was only from 1972 that an effort was made by the Malaya Law Review to encourage publications from Indonesia, the Philippines and Thailand. Since that date articles from Indonesia and the Philippines have been published in the Review. In 1972 two articles from Indonesia appeared in the December issue of the Review, *viz*., Sudargo Gautama, "The Role of Law in the Development Process and the Role of the Lawyer in Indonesia";[40] Soerjono Soekanto, "Inheritance Adat Law in Indonesian Peasant Society".[41] In 1973 three articles on Indonesian law appeared in its December issue, *viz*,. Charles Himawan, "Highlights on the Company Law of Indonesia";[42] R. Soemitro, "Issues Pertaining to the Taxation of Foreign Investors in Indonesia";[43] S.K. Sutanto, "Negotiation of Selected Provisions of Bilateral Tax Treaties (the Indonesian Experience)".[44] In 1974 two more articles on Indonesian law were published, *viz*., Hermien Hadiati Koeswadji, "Integration of Scientific Proof with Traditional Legal Procedure in Indonesia";[45] Rudhi Prasetya and Neil Hamilton, "The Regulation of Indonesian State Enterprise".[46] 1975 saw the publication of G.T. Santos, Jr., "Recent Changes in the Philippine Law on Income Taxation",[47] In 1976 yet another article on Indonesian law appeared in the Review — Hermien Hadiati Koeswadji, "Law and Development: The Legal Status of Women in Indonesia: their Role and Challenge in Creating a New National Law".[48] In 1977, Barry A.K. Rider wrote on "The Regulation of Insider Trading in the Republic of the Philippines".[49] Most of the articles on Indonesia were based on papers presented at the various seminars on Indonesian Law organised by the Law Faculty, University of Singapore.

Encouraged by such a good response, the Malaya Law Review in July 1977 decided to have an *ASEAN Section* on a regular basis — the section is intended to include articles, comments and legislation lists from Malaysia, Indonesia, the Philippines and Thailand (since the Malaya Law Review is a Singapore publication, articles on Singapore law are not included in the *ASEAN Section* but in the general section). The Malaya Law Review is making every effort to build up this section. To this end, it is inviting correspondents from the other four ASEAN members to serve on the Review. At present Teuku Mohammad Radhie, Head, Division of Research and Development, National Law Development Centre, Ministry of Justice, Indonesia, is our ASEAN correspondent from Indonesia. We expect shortly to hear from our friends in the Philippines, Thailand and Malaysia. It is hoped that with their legal expertise and contacts they will be able to obtain publications from their respective countries

40 (1972) 14 Mal. L.R. 259.
41 (1972) 14 Mal. L.R. 244.
42 (1973) 15 Mal. L.R. 139.
43 (1973) 15 Mal. L.R. 145.
44 (1973) 15 Mal. L.R. 159.
45 (1974) 16 Mal. L.R. 97.
46 (1974) 16 Mal. L.R. 296.
47 (1975) 17 Mal. L.R. 354.
48 (1976) 18 Mal. L.R. 339.
49 (1977) 19 Mal. L.R. 355.

and to advise on the suitability for the purpose of publication of any contribution from their countries.

The latest issue of the Review (1978 July issue) contains an article entitled "Law of Contract in Indonesia"[50] by Sunaryati Hartono and a *Legislation List* of current Federal statutes from Malaysia. It is hoped that in the not too distant future, the Review will report regularly on recent legal developments in each of the ASEAN countries.

Although the abovementioned type of research is not conducted in Singapore, but only published here, it is, nonetheless, important to mention it in this paper as it evidences a current interest in the legal systems of the other ASEAN countries.

It is significant to note that recently the Malayan Law Journal has shown interest in publishing articles relating to other ASEAN legal systems apart from Singapore and Malaysia. In the September 1978 issue, it published an article entitled "Some Aspects of Corporate and Taxation Laws affecting Foreign Investment in Indonesia" by Logaraj Nadaisan, a legal practitioner in Singapore.

Not only has there been a growing interest in publishing legal materials from other ASEAN countries, but recent efforts have been made by the Institute of Southeast Asian Studies, Singapore, to encourage scholars from ASEAN countries and other regions to come to the Institute to engage in ASEAN studies in the area of law. This is significant as, until recently, the Institute has attracted scholars mainly in the area of politics, economics and sociology. The Institute's research interest is focused on the many faceted-problems of development, modernisation and political and social change in Southeast Asia. There is great scope for lawyers to do research on ASEAN legal and ASEAN comparative law studies.

A study on "ASEAN and the Problems of the Law of the Sea" is currently being undertaken by Phiphat Tangsubkul (a Thai national) at the Institute. Tangsubkul is a Research Fellow under the ASEAN Fellowship Programme. The study "attempts to analyse the problems that the five ASEAN countries are facing today relating to the delimitation of the sea boundaries and the sharing of resources of the sea. It also hopes to provide an acceptable framework as a compromise for protecting national interests in the seas of each nation in the ASEAN region". The monograph is expected to be published sometime in 1979. A similar study was made in 1976 by Chao Hick Tin in an article, "The Law of the Sea and ASEAN."[51]

Two other studies on the law of the sea with emphasis on the ASEAN viewpoint have been made: *ASEAN and the Law of the Sea: A Preliminary Look at the Prospects of Regional Co-operation* by Peter Polomka was published in 1975. The Institute also published another study by the same author entitled *Ocean Politics in Southeast Asia* (1978).

50 (1978) 20 Mal. L.R. 142.
51 (1976) UNAS Journal, 18. Mr. Chao is one of Singapore's representatives to the Third United Nations Conference on the Law of the Sea.

Three more specific studies of other areas of law covering some of the ASEAN countries published by the Institute are: Robert Fabrikant, *Legal Aspects of Petroleum Sharing Contracts in the Indonesian Petroleum Industry* (1973);[52] C.V. Das & V.P. Pradhan, *Some International Law Problems Regarding the Straits of Malacca* (1973); Betty Jamie Chung and Ng Shui Meng, *The Status of Women in Law: A Comparison of Four Asian Countries* (1977).[53] This Occasional Paper makes a comparative study of four Asian countries three of which are from the ASEAN region — Malaysia, the Philippines and Thailand. The countries are chosen for the differences in their cultural backgrounds: Islam in Malaysia, Catholicism and the Spanish influence in the Philippines and Buddhism in Thailand. The focus of the discussion is on marriage and family laws, inheritance laws and property laws. An attempt is also made to relate the legal status of women in these four countries to the social, economic and political status of women in these respective countries.

Another study that has just been completed is an "Economic Evaluation of Indirect Taxation in ASEAN." The study aims at examining the role and structure of indirect taxes as they have evolved over the last decade in ASEAN countries.

The Institute hopes that ASEAN studies will attract more legal researchers from among the ASEAN countries. In the ISEAS Annual Report 1977-78, it was noted that ASEAN and regional cooperation were rapidly becoming one of the main focuses of the Institute's research activities.

It is significant to note that of the eight LL.M. candidates at the Law Faculty two are engaged in research on comparative ASEAN legal studies. The topics are *Legislative Control of the Insurance Industry in ASEAN Countries* and *The Legal Framework of Regional Cooperation amongst ASEAN Countries.*

On 20th September 1978, the New Nation reported that ASEAN diplomats at the UN said that they hope to achieve closer cohesion in voting on issues before the General Assembly. If this heralds a concerted effort by ASEAN to speak with one voice not only at the General Assembly but also at other sessions, for example, the Law of the Sea sessions and the UNCITRAL sessions where, *inter alia,* legal issues are involved, the groundwork has to be prepared to see what implications a common stand would have on ASEAN as a whole vis-a-vis the rest of the world community and on the national interests of each of the ASEAN state. A team of ASEAN legal research scholars is needed to prepare the groundwork for promoting ASEAN solidarity at the UN. Such research has to be coordinated.

CONCLUSION

The survey has covered three areas of research. Doctrinal research of the traditional kind — the elaboration of legal doctrines and associated research such as the collation of cases and materials, etc. Here, we noted that much can be done to help bring about an

[52] 2nd ed.
[53] Occasional Papers Series No. 49.

integrated and homogenous legal system. While a considerable corpus of legal literature can be found in the Malaya Law Review and the Malayan Law Journal, legal literature in the form of textbooks and commentaries on statute law is still meagre. Little wonder as at the present moment there is no legal research institute with full-time legal researchers. The burden of legal research has so far fallen mainly on the shoulders of a few legal academics in the law Faculty — the only law school in the country. The history of the Law Faculty dates only from 1956. In 1957 the first batch of students were admitted. Staff turn-over rate has been quite rapid, entailing at times a shortage of staff, with a consequently heavy teaching load. These factors have affected research. At present, the Faculty has only twenty two full-time members of the teaching staff (about 32 per cent of the teaching posts are vacant). Of these, only about half are senior lecturers and above, who have had some years of teaching experience and therefore can be expected to engage in more research activities. The other half are still in the process of consolidating their teaching materials and improving their teaching techniques; they cannot be expected to be too productive in research in the first few years of their teaching career.

One of the problems confronting the legal researcher who writes with a view to publication is the limited market for local textbooks. As Dean Jayakumar pointed out in "Twenty One Years of the Faculty of Law, University of Singapore: Reflections of the Dean":[42]

> Unlike countries like India or Australia which have numerous law schools and large legal professions … Singapore... has one law school and a (small) legal profession of about 600 lawyers [now about 660]. Furthermore, the sad fact is that most law firms do not purchase local legal publications, ... The limited market, therefore, tends to discourage staff members from publishing books.

Funds are needed to prepare manuscripts for publication. In the past the Law Faculty has had generous grants from the Asia Foundation which has funded a number of research projects. This source, however, is fast drying up as Singapore is considered a "developed" country. However, this does not mean that the Asia Foundation will not continue to fund research projects, but it is envisaged that it will not be as generous as it was in the past. Unless financial assistance is forthcoming research and publication may well be affected.

Legal research, which by and large has come from members of the Law Faculty, has tended to lean more on doctrinal research. LD research has been negligible. In any case the expertise available in the Law Faculty is more suited to doctrinal rather than LD research. The scope of LD research is broader — the issues involved and the answers may not be found in conventional legal sources. Field work may be necessary and often an inter-disciplinary approach may also be required to identify or evaluate the impact of variable factors upon law.

So far as Singapore is concerned, research on "ASEAN legal systems" has centered mainly on the legal system of Malaysia, for reasons already mentioned. However, there is beginning to be a great deal of interest generated in the legal systems of other ASEAN countries, particularly in the area of commercial law. There are a number

[54] (1977) 19 Mal. L.R. 1 at 22.

of ways in which we, the ASEAN countries, can get to know one another's legal system better. First, by holding regular conferences of this nature, perhaps on a smaller but more intensive scale focussing on two or three aspects of law each time. Second, by having an exchange of academic staff so that "ASEAN comparative law" can be taught in the law schools of the respective ASEAN countries. Third, by providing research fellowships in any of the ASEAN countries to do post-graduate work involving "ASEAN comparative law". Indeed, with the concept of an ASEAN university being now discussed in Labuan[43] this conference should start thinking of how to implement the study of "ASEAN comparative law" on an informal basis. Fourth, a publication of an ASEAN law journal to assist in the promulgation of the national laws and the monitoring of current legal developments of Member States.

There are no planned programmes and long-term developmental plans as such, as there is no legal research institute in Singapore. Such plans as there are, are those of the individual scholar's own preferences and priorities. Although the Law Faculty is making a modest effort in directing writing in specific areas of local law, this is not sufficient to develop the local legal literature that is needed and the LD research which is vital for the law to keep pace with development.

It is imperative that a legal research institute be set up in Singapore. Without such an institute devoted to full-time research, it is almost impossible to build up a legal literature and to plan any research programmes. The institute should be charged with the following functions, *inter alia,*

— advancement of legal scholarship with emphasis on the development of a homogenous legal system and the administration of justice.

— LD research activities — liaison with government and quasi-government agencies concerned with legal research and law reform. These institutions could request the institute to make the necessary field studies. Provision of in-service training courses on particular aspects of the law.

— organisation of joint research programmes with other research organisations in other ASEAN countries with the object of conducting "ASEAN comparative law".

— publication of studies, monographs, research papers, articles, and other works or writings on law, with special emphasis on those related to its general objectives.

It is suggested that the more immediate research programme which such an institute should engage in ought to include,

— doctrinal research with a view to developing an 'independent' legal system particularly in those areas where the law of England is received but subject to local circumstances.

[55] New Nation, 1st November 1978.

— the annotation of statutes.

— research tools.

— an examination of the various English statutes which might be applicable under section 5(1) of the Civil Law Act with a view to enacting similar statutes based on the English models. This entails tailoring the English statutes to suit local conditions.

— field studies at the request of the government or its agencies. For example, a study could be made on the sort of clauses found in transnational contracts to see whether they are fair to their local parties.

— ASEAN legal studies.

The institute should be financially supported both by the Government, the University of Singapore, together with the private sector, *e.g.* banks and other commercial institutions.

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