A Conscious Effort to Develop a “Different” Common Law of Obligations: A Possible Endeavour?

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Exactly two decades have passed since the Singapore Parliament passed the Application of English Law Act (“AELA”) in 1993. One of its purposes was to promote the development of an autochthonous Singapore legal system. The Minister for Law stated that steps would be taken to develop the Singapore common law in order to free it from dependence on English common law. He further stated that “[w]e must have certainty in our laws and move away from reliance on English law, because we do not know what the conditions are that shape the UK decisions”. On the 20th anniversary of the passage of the AELA, the broad objectives of this paper are to use Singapore, which has taken a conscious effort to develop a “different” common law, as a model jurisdiction to examine the extent to which it is possible to develop a “different” common law of obligations and to examine whether such a “different” common law of obligations – whether real or imagined – continues to have an influence in the greater common law world.

In order to achieve these broad objectives, this paper proceeds along two parts. The first part adopts both internal and external perspectives of the Singapore common law of obligations. The internal perspective draws on data from an empirical study of all reported Singapore decisions since independence to December 2012. The data will explain the reasons why Singapore courts have developed a strongly formed local jurisprudence in certain areas of the law of obligations. The external perspective also draws on the above-mentioned data, but the emphasis is on how and to what extent the Singapore courts have relied on foreign decisions in the law of obligations. These two perspectives combine to give a comprehensive study of the development of the Singapore common law of obligations since the passage of the AELA, and helps explain whether it is ever possible to speak of a “different” common law of obligations and, if so, to what extent and under what influences, all within a concerted and explicit effort to develop an autochthonous legal system.

The second part of the paper considers the extent to which a “different” common law of obligations – whether real or imagined – continues to have relevance in the greater common law world. To do so, this paper looks at how and to what extent Singapore law is being used by foreign courts and attempts to explain why.

Ultimately, this paper hopes to show that while the desire to develop a “different” common law of obligations is possible and, indeed, mandated at times by local circumstances, such an ambition cannot be taken too far. Thus, despite a conscious effort to do so, the Singapore courts have in fact restrained themselves in certain areas and continued to adopt the more common perspective. In the end, the Singapore experience shows us that an attempt to develop a “different” common law of obligations – within reasonable limits – will lead to the enrichment of the body of law that is the common law of obligations.