Modern law of trusts in Singapore: nationalism and internationalism

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Abstract

English equity was introduced into Singapore, a former British Colony, through the Second Charter of Justice 1826. Post independence, Section 3 of the Application of English Law Act (“AELA”) 1993 has made it clear that the English common law (including the equitable rules and principles) that had formed part of the law of Singapore prior to the commencement of the legislation shall continue to apply, subject to modification to suit local circumstances and conditions. A clear instance in Singapore law where English equitable doctrines have been localised to suit a modern Asian society is the twin presumptions of resulting trust and advancement. It is the ideal case study to examine the interface of cultural factors, national policies, statutory influence and legal culture. Recent judgments handed down by the Singapore Court of Appeal entrenched the applicability of the twin presumptions in Singapore law while endeavouring to develop as well as contain the presumption of advancement. Essentially, in one case, the Court of Appeal commented that the presumption of advancement continues to apply between husband and wife as well as between father and child, in light of the local conditions. Yet, in another case, the court expressed willingness to extend the presumption of advancement between mother and child but refused to judicially recognize a presumption of advancement between cohabitees.

As a matter of Singapore law, the developments reflect a tension between the Asian concept of family, modern family arrangement and values as well as national policies. Viewed against the wider landscape of the common law, taking into account the developments of other major jurisdictions, there are clearly both points of convergence as well as divergence. This is, however, only a basic level of analysis. On the broader level, the localization of the twin presumptions has ripple effects on other areas of the law where there will be further convergence and divergence. These areas include illegality and enforcement of equitable interests, the future of the common intention constructive trust in Singapore law and the relationship between statute and equity. In this part of the discussion, we will focus on comparing Singapore law with English and Australian developments. Based on empirical data, these jurisdictions have the greatest influence on the development of the law of equity in Singapore.

The final part of the paper draws several lessons from the preceding discussion both for the common law world generally as well as for Singapore law specifically. The Singapore experience shows that convergence at one point may lead to convergence or divergence in other areas of the law. It is also too simplistic to merely observe points of convergence and divergence in the common law world without assessing the underlying reasons for these developments. The dynamism and sustainability of the ‘common law’ both as a term and an enterprise are closely tied in with the incremental developments within each jurisdiction and the resultant convergence and divergence across the jurisdictions.