
IFS4101 - LEGAL ASPECTS OF INFORMATION SECURITY

AY2021/2022, SEMESTER 2, WEEK 3

RECAP WEEKS 1-2

- Week 1: Origins / Motivations of the Law and Legal Systems. Read about Singapore's governance system.
- Week 2: How to Regulate Behaviour / Intellectual Property
- Today: Legal Methods and Reasoning / Finding Sources of Law.

LEGAL METHOD AND REASONING: WHAT IS IT?

- Law is an expression of the collective will of the society. It represents the institutional normative order vs. non-institutional normative order. See Neil MacCormick, *Institutions of Law*. New York. Oxford University Press (2007).
- The rules of that institutional normal order must be trusted by the community who anointed the rules of the institution. To create trust on those rules, they must be transparent, be accepted as fair, and be applied with consistency.
- It is expressed in a language that must be interpreted.
- There must be a methodology to justify each step in the reasoning that considers its impact on alternative scenarios because a rule that is adopted in the one case, will have implications on future cases
- Iterative process that culminates in final binding legal decision by the courts (trial) or if the parties settle their disputes through alternative dispute resolutions (mediation, arbitration)

RESOLVING A CASE

GENERAL OVERVIEW OF CASE RESOLUTION

1. Is there a case or controversy? Is this a dispute that can be adjudicated in court?
2. If yes, what is the legal dispute involved? What are the legal rules that may be involved in this case?
3. How do I know if a legal rule was breached?
 - A. *Identify* the relevant facts of the controversy
 - B. *Interpret* the relevant legal rules
 - C. *Apply* the interpreted legal rules to the facts
4. How does this work in real life?

LEGAL METHOD AND REASONING IN CONTEXT

- Case Scenario

- John goes to the police to accuse Jane of having taken toys from him without his permission.
- What are the issues?

WHAT IS THE DISPUTE/CONTROVERSY INVOLVED?

- The accusation is that Jane took John's toys without permission.
- Does the law give redress for people who take stuff without permission?
 - Contrast with queuing for which the law gives no legal redress.
- What are the legal rules likely to apply here?
 - Taking stuff with no permission sounds like theft which is a crime under Section 378 of the Penal Code 1871 (Cap. 224).
 - If Jane took John's toys from his house, it's a theft in dwelling house which is a crime under Section 380.
 - If Jane was the clerk or servant of John when she took his toys, it's a theft by clerk or servant which is a crime under Section 381.
 - If Jane had asked her gang mates to gather around to beat John up in case he resisted when she picked his toys, this considered to be a theft after preparation made for causing death or hurt in order to commit theft, which is a crime under Section 382.

IDENTIFY THE RELEVANT FACTS TO MATCH TO THE LEGAL RULE

378. *Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.*

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- The facts/parameters that are necessary:
 - “intending to take”
 - “dishonestly”
 - “movable property”
 - “out of the possession”
 - “any person”
 - “without that person's consent”
 - “moves that property”

WHAT FACTS DO WE NEED TO GATHER TO PROVE THEFT?

Case Scenario: John goes to the police to accuse Jane of having taken toys from him without his permission.

- Do we know if Jane was the one who took the toy? Yes, according to John.
- Did she intend to take?
 - Need to investigate further
- If she intended to take, did she act with dishonesty? What does “dishonesty” mean?
 - Need to investigate further.
- Do we need to confirm if “movable property” was involved? What does “movable property” mean?
 - Need to investigate further.
- Was the movable property taken out of John’s possession? Yes, according to John.
- Was the movable property taken from a person? Yes – John is a person, not an animal.
- Is John the owner of the property in question?
 - Need to confirm
- Was the property taken without consent? Can only determine after confirming that John was the owner. According to John, consent was not given.

INTERPRET THE RELEVANT RULES

378. *Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.*

- What does "movable property" mean? Section 22 of the Penal Code 1871 (Cap. 224) has the following definitions:
 - "immovable property" means land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;
 - "movable property" includes property of every description, except immovable property;
 - "property" means money and all other property, movable or immovable, including things in action, other intangible or incorporeal property and virtual currency;
 - "virtual currency" means a digital representation of value in money or money's worth that can be digitally traded and functions as a medium of exchange, a unit of account or store of value, regardless of whether it is legal tender in any country or territory including Singapore.

APPLY THE INTERPRETED RULES TO THE FACTS

378. *Whoever, intending to take **dishonestly** any **movable property out of the possession** of any person without that person's consent, **moves that property** in order to such taking, is said to commit theft.*

- The rule is TRUE (i.e., the legal rule is breached) when:
 - all input parameters are entered
 - all input parameters are of the type that match the input parameter type requirements
 - all input arguments are TRUE

... MEANING

Case Scenario: John goes to the police to accuse Jane of having taken toys from him without his permission.

- Jane was the one who took => argument is TRUE
- Jane intended to take => argument is TRUE
- Jane acted with dishonesty => argument is TRUE
- The toy is a “movable property” => argument is TRUE
- John is a person => argument is TRUE
- John is the owner of the toy => argument is TRUE
- Toy was taken out of John's possession => argument is TRUE
- John did not give consent => argument is TRUE

LAW AND FACTS NEED TO BE SEPARATED

- What are facts?
 - *Human actions or events in which human beings participate that might be known even if not directly observed at the time of adjudication.*
- What is the law?
 - *The rule (function) that, when applied to the set of facts, determine the outcome to be imposed on the defendant.*
- Why is separating fact from law necessary?
 - Generalisability – law to apply to different fact situations; like cases to be treated alike
 - Fact-finding and application of the law are two different stages of the jurisprudence. Unlike Romano-canon system, the common law separate the determinations of “matters of fact” from “matters of law” institutionally. Juries and the court where the case is first initiated settle matters of law. Higher courts treat the facts found in the lower court as the final word. They focus on whether or not the law was wrongly applied. Note that Singapore abolished jury trials in 1969.
 - Sometimes facts and law are fused (e.g., defamation, negligence)
- How do we extract relevant facts (parameters) from the law (function)?

EXERCISE IN EXTRACTING FACTS

- **Active Mobility Act 2017**
- **Article 15.—(1)** Subject to this Act, an individual must not ride a bicycle, a PAB or a personal mobility device, or drive or ride a motor vehicle that is neither a motorised wheelchair nor a mobility scooter, on a public path that is a pedestrian-only path.
- What are the relevant facts for this rule?

HOW TO PROVE FACTS?

- Adversarial method involves two sides presenting their views and evidence to sort out what actually happened
- Court has established rules that enable each party to have access to opponent's sources and resources (discovery)
- Documents by parties (pleadings) filed with court set out scope of each party's case against other
- Parties can agree not to contest certain (immaterial or uncontroversial) facts
- Court to decide if relevant facts proved before decision can be reached
- cf. civil law systems adopt inquisitorial process

HOW TO PROVE FACTS?

- The evidential process
 - Material facts are proven (or disproven) by “evidence” – other facts(!)
 - Evidence can be
 - Real evidence e.g., murder weapon with accused's prints and victim's blood,
 - Oral evidence e.g., victim's screams,
 - Documentary evidence e.g., victim's deathnote identifying accused
 - Some types of evidence are so unreliable or deemed unreliable court declines to accept them (inadmissible), or accept them on conditions (rules of evidence)
 - Parties in adversity subject evidence to scrutiny e.g., cross-examination for witnesses, authentication challenge for other evidence

HOW TO EVALUATE FACTS?

- **Burden of proof:** placing legal responsibility for establishing a particular fact on a party
- **Standard of proof:** how strong the evidence must be in order to satisfy the court that the fact that the evidence purports to substantiate occurred
 - Civil cases: “on the balance of probabilities”
 - Criminal cases: “beyond reasonable doubt”
- Process is different to reflect society’s appreciation of different values involved (personal liberty, state sanction vs. monetary compensation)

UNDERSTANDING WRITTEN LAW (LEGISLATION)

DECIPHERING WRITTEN RULES / LAWS

- Accuracy and precision of language as a medium to convey the laws – correct use of language is vitally important
- Language is inherently malleable, contextual and ambiguous
 - Linguistic syntax can be ambiguous (syntactic ambiguity)
 - See the "million-dollar comma" case: <https://www.bbc.com/worklife/article/20180723-the-commas-that-cost-companies-millions>
 - Words can have more than one meaning (semantic ambiguity)
 - commonsensical meaning preferred, but is there always a commonsensical or core meaning?
 - even synonyms can mean different things
 - defined meanings vs. quasi-normative usage (and what if the use is specific to a geography?)

SYNTACTIC AMBIGUITY: EXAMPLE I

- *A person shall not use a guard dog at any premises unless a handler who is capable of controlling the dog is present on the premises and the dog is under the control of the handler at all times except while it is secured so that it is not at liberty to go freely about the premises.*
- Question:
 - An accused used three Alsatian dogs to guard his premises. No handler was present on the premises but the dogs were secured and could not freely move about the property.
 - Did the accused break the law?

WHICH ONE IS THE CORRECT INTERPRETATION?

INTERPRETATION 1

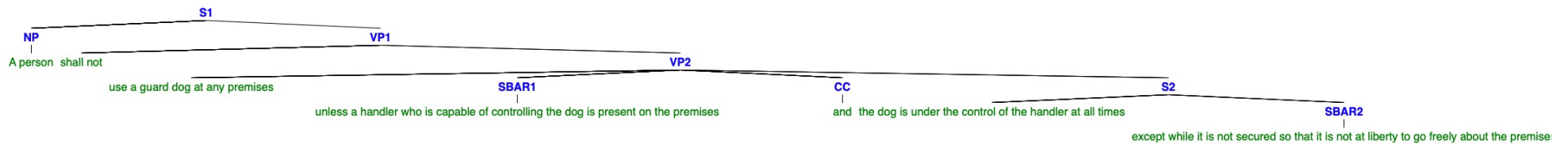
- If
 - a handler who is capable of controlling a dog is present on the premises
 - AND
 - the dog is under the control of the handler
 - OR
 - the dog is secured so that it is not at liberty to go freely about the premises
- Then
 - a person is permitted to use the guard dog on the premises

INTERPRETATION 2

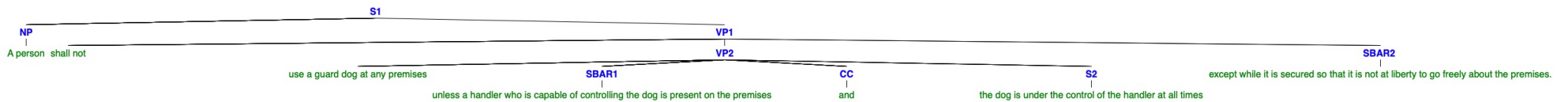
- If
 - a handler who is capable of controlling a dog is present on the premises, AND the dog is under the control of the handler;
 - OR
 - the dog is secured so that it is not at liberty to go freely about the premises
- Then
 - a person is permitted to use the guard dog on the premises

SYNTACTIC AMBIGUITY IN NLP TREE FORM

INTERPRETATION 1



INTERPRETATION 2



SYNTACTIC AMBIGUITY IN CODE FORM

INTERPRETATION 1

```
def mayUseDog = False;  
if handler and (dogControlled or secureDog)  
    mayUseDog = True
```

INTERPRETATION 2

```
def mayUseDog = False;  
if (handler and dogControlled) or secureDog  
    mayUseDog = True
```


SYNTACTIC AMBIGUITY: EXAMPLE 2

- In law, “and” is not always *conjunctive*, and “or” is not always *disjunctive*.
- Example 2:
 - *To use the income therefrom and any part of the capital thereof for any purposes for and/or connected with the education and welfare of Bahamian children and young people.*
- Attorney-General of the Bahamas v Royal Trust Co. (1986) (*and* is disjunctive, i.e. means “or”; education is part of welfare but not all welfare is education)

SYNTACTIC AMBIGUITY: EXAMPLE 3

- *This agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one year's prior notice in writing by either party.*
- Question:
 - When can a party terminate this contract?
 - Interpretation one way or the other meant someone could save or lose CAD1.0 million

LINGUISTIC AMBIGUITY IN LAW

- *Frigalment Importing Co. v. B.N.S. International Sales Corp.*
 - Buyer ordered frozen chickens from a New York wholesaler in two size categories: category 1 consisting of chickens with weight ranging from 1.5 to 2 pounds and category 2 consisting of chickens with weight ranging from 2.5 to 3 pounds.
 - When the shipment arrived, the Buyer found all of the larger chickens were stewing chickens (old birds), not broilers or fryers (young birds). What did the word “chickens” mean?
- *Raffles v. Wichelhaus*
 - Two ships named Peerless – but neither the buyer nor seller knew. One ship would set sail from Bombay (as it was then known) in October; the second sets sail in December.
 - Buyer order bales of cotton and expected the cotton to arrive in the ship that would set sail in October. Seller thought it was supposed to send the cotton out in the ship that departs in December.
 - Buyer rejected the goods when they came in October and the seller sued. Who was right?

STATUTORY INTERPRETATION REQUIRES A FRAMEWORK

- Recognize that language inevitably contains latent syntactic and semantic ambiguity ; one reason that the use of AI to read texts continues to be challenging
- In the context of legislation, the enactment of the laws are accompanied by the process of debate and discussions, containing parliamentary records (e.g, First Reading, Second Reading and Third Reading)
- To ensure consistency in the interpretation of the laws by the judiciary, in 1993, Parliament enacted rules for interpretation of written laws: s 9A, Interpretation Act (<https://sso.agc.gov.sg/Act/IA1965?ProvIds=legis#legis>)

S 9A RULES FOR STATUTORY INTERPRETATION

- Interpretation that promotes the purpose or object underlying written law is preferred to contrary interpretation (“purposive interpretation”)
 - What about the literal meaning of words used in written law (“literal interpretation”)?
 - Literal interpretation to give effect to purpose of legislation
 - Non-literal interpretation only possible within legislative purpose
 - Strict interpretation given to penal provisions in accused’s favour, as part of purposive interpretation: *Forward Food Management v. PP* (2002)
 - Court’s purposive interpretation should be “consistent with, and should not either add to or take away from, or stretch unreasonably, the literal language of the statutory provision concerned”: *Tan Kiam Peng v. PP* (2008)

S 9A RULES FOR STATUTORY INTERPRETATION

- Purpose and object underlying written law may be found by referring to *extrinsic materials*
- Extrinsic materials = any material capable of assisting in the ascertainment of the meaning of the provision in the circumstances stated in s9A
 - Explanatory Statements in Bill
 - Second Reading speeches
 - Official record of debates in Parliament
 - Comments of Ministers in introducing statute
 - Select Committee, Law Revision Committee reports
 - Legislative history of statute, provisions of all other Acts *in pari materia*
 - Academic commentaries
 - Diplomatic notes between countries

OTHER AIDS TO STATUTORY INTERPRETATION

EXPRESSIO UNIS EST EXCLUSIO ALTERIUS

- Literal Meaning: The expression of one thing is the exclusion of another
- Example

No contract for the sale of goods, wares, or merchandise for the price of \$33 or more shall be allowed to be good [unless, among others, it is evidenced in writing]...": Statute of Frauds

- Applying *expression unis* rule, sale of stocks and shares fell outside rule because these are not “goods, wares or merchandise”: *Tempest v. Kilner* (1846)

OTHER AIDS TO STATUTORY INTERPRETATION

EJUSDEM GENERIS

- Literal Meaning: of the same kind. In other words, if a list of specific items is followed by general class, the general class only applies to same kind of specific items listed. In other words, the “general” ordinarily gives way to the special or particular.

- Example

No automobiles, trucks, tractors, motorcycles and other motor-powered vehicles are allowed in the park.

- “Motor-powered vehicles” would not include airplanes, since list of specific items is of land-based transportation

OTHER AIDS TO STATUTORY INTERPRETATION

NOSCITUR A SOCIIS

- Literal Meaning: It is known by its companions / friends. In other words, the meaning of a word is affected by its surrounding words and is interpreted accordingly.
- Example:

“burning, tearing, mutilating, or defacing” a will is illegal.
- Question: if a document is partially burnt, is it caught by the rule?
- Answer: Since a document can be partially torn, mutilated or defaced, a document can also be partially burnt. Therefore, partial burning of a document will be caught by the rule.

OTHER AIDS TO STATUTORY INTERPRETATION

- *Utres magis valeat quam pereat* = that the thing may rather have effect than be destroyed
 - Better to give written provision some effect harmoniously with other written laws than to give it no effect
- *Lex nil frustra facit* = the law does nothing in vain
 - Interpretation given that avoids an absurd or pointless result

EXERCISE

- **Instructions:** In your groups, discuss the following case and the outcome that should apply, using the rules of interpretation outlined above.
- The facts:
 - A boy was caught riding his bicycle at the HDB void deck.
 - HDB's rules about the use of the void deck is established by the rules shown in the picture on the right.
- Questions:
 - Did the boy break the rule? Why?
 - How did you reach your opinion? Which of the interpretative rules did you rely on to reach your opinion?
 - Are there facts that are not given that would have affected your opinion? List them down.



10:00

UNDERSTANDING CASE LAW

WHAT IS CASE LAW?

- What's the purpose of relying on case law / common law?
 - Justice / fairness / consistency
 - Appeal to policies, objective or universal rights or principles, norms of the society
- How do we extract the “law” from the cases to apply to the facts at hand?

EXTRACTION OF THE LAW FROM THE CASE

- First decide how similar is case under consideration (the “Current Case”) to the precedent under consideration? Note that this means it is not possible for us to select the cases that apply without first **understanding the facts and the issues in the Current Case**.
 - Similarity to scientific study – first, identify the problem statement. In law, this is called the **Question**.
- Second, find the cases that have a **set of facts similar to** the Current Case (on point).
- Third, out of the cases with a similar set of facts, find the cases that have a **legal conclusion that is on point**.
- Fourth, if there are no cases on point on facts and law, find cases that are as similar as possible in both respects, and try to draw similarities and distinctions between case precedents and the Current Case.

WHAT DOES IT MEAN TO DRAW A DISTINCTION?

- Does the precedent case **address the same subject matter** as the Current Case?
- The subject matter is the same, but is there a **difference in the material facts**? In other words, is there a fact known in this case that, **had the fact been present in the earlier case**, would have affected the decision?
- Example:
 - Jane is a professional accountant. John asked Jane to prepare a set of accounts for his business, ACE Limited. John shows Jane's prepared accounts to an investor who relied on the information to invest into ACE. Unfortunately, the numbers in the accounts are not correct. ACE goes into bankruptcy and the Investor sues Jane for negligence (i.e., breach of a duty of care that resulted in proximate harm).
 - Common Law: An accountant only owes a duty of care to her client.
- Is the statement on the law *per incuriam* (made in ignorance of the law) or *ultra virus* (beyond authority)?

RATIO DECIDENDI (PL. RATIONES DECIDENDI)

- **Ratio Decidendi** – the essence / legal rule from the case that is binding on future cases
- How do we locate this?
 - Sometimes, we get lucky. The judgment contains an actual explicit statement of the legal rule and the facts that it relied upon in its formulation.
 - Frequently, we are not so lucky. Need to carefully read the judgment to **extract** implicit statements of the legal rule
 - Cases frequently have **multiple rationes decidendi**. Then, there is the problem of multiple judgments / opinions. Now, the challenge is how to extract the ratio decidendi that all the judges (or the majority) agreed on
 - There is also the problem that in subsequent cases, the **ratio decidendi** will be refined and re-interpreted. So finding one case, doesn't end the analysis. We'll need to trace the cases that follow (c.f., scientific research where we look for later materials that are built upon a particular research paper to understand what happened afterwards)

EVOLUTION OF RATIO DECIDENDI

- **Law as syllogistic rules (deductive reasoning)**
 - **Rule 1:**
 - If (premise A and premise B are true) {
 - If (premise C is true) {
 - Do Alpha }
 - Else {
 - Do Beta }
 - **Rule 2:**
 - If (premise A or premise C are true) {
 - If (premise D is true) {
 - Do Gamma }
 - Else {
 - Do Omega }
- **Using inferential reasoning to draw a new ratio decidendi**
 - Combine Rules 1 and 2 in an inferential way
 - What's common? That premise A is true
 - Then, can we isolate the relevant facts that drove the decision and narrow its scope to the ratio decidendi if premise A alone were true?
 - Let's look at other things that can help make that decision
 - Policy / analogies / common sense / experience / fairness / justice
 - Sometimes, the case is so absurd that courts will limit its decision to just that particular set of facts and no others.

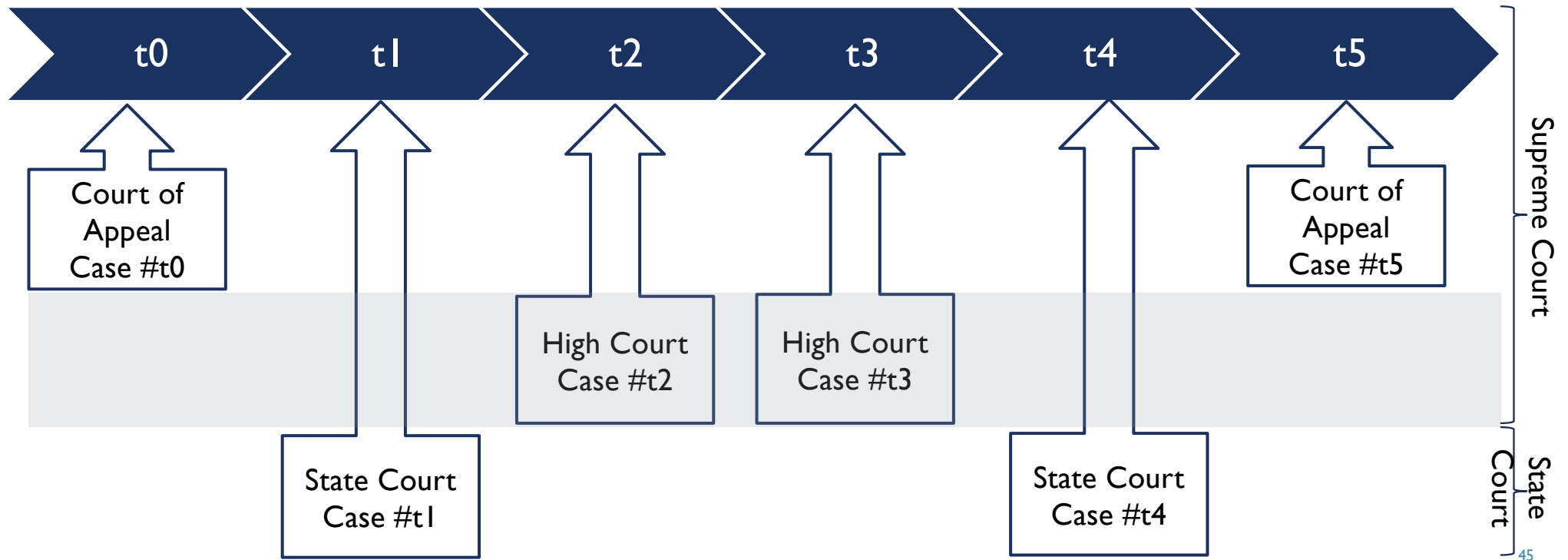
OBITER DICTUM (PL. OBITER DICTA)

- Literal Meaning: “Something said in passing”. Also known as the “By the way”. Remember that lawyers / judges like to voice their opinions / philosophies
- Comments and observations, such as hypothetical statements, illustrations or principles that underline the *ratio decidendi*
- While not binding, can be **highly persuasive**
- In some cases, dicta may be subsequently interpreted as the *ratio* of the decision.
- E.g., *neighbour* principle by Lord Atkin in *Donoghue v. Stevenson* is strictly obiter / dicta.

JUDICIAL PRINCIPLES OF INTERPRETATION

- *Stare Decisis* : Courts must follow judicial precedent – i.e., if the case at hand is identical to a case that was brought before the “legal system” (not necessarily the same court or the same judge, but just the same system), the results of the case at hand **must be identical to the previous case** (with the necessary changes to be made).
- Judicial precedent is hierarchical in nature:
 - Higher court’s decision must be observed. This is *vertical stare decisis*.
 - Horizontal court decision may or may not be observed (depends on the country). In Singapore, horizontal court decisions need not be observed.
 - Review https://www.law.cornell.edu/wex/stare_decisis for the pros and cons of the doctrine of *stare decisis*.
 - *Stare decisis is a judicial practice* – it is NOT LAW.

HOW DOES STARE DECISIS WORK?



DECISIONS FROM OTHER JURISDICTIONS

- English decisions are considered highly persuasive
 - UK Privy Council (a separate constitution of the U.K. House of Lords) used to be final court of appeal (abolished in 1994)
 - Decisions from PC when it was our appellate court are *binding* (*vertical stare decisis*)
 - Many Singapore laws have English statutory counterparts
- Australian decisions on interpretations of laws which Singapore has in common with Australia are highly persuasive
 - e.g., Companies Act, Copyright Act
 - Same approach with Malaysian and Indian decisions
- • US decisions are for the most part only marginally persuasive
 - *cf* many of our intellectual property laws are derived from US legislation
 - US decisions will be highly persuasive when interpreting similar provisions (*in pari materia*)

JUDICIAL PRECEDENT: CONSIDERATION OF THE FUTURE

- Court decision will in be a judicial precedent for future cases
- Lawyers will refer to and extract legal reasoning in this case to advise clients
- Proper development of law involves more than just fairness of parties in this case
- Consideration of future cases will always be of greater relevance to appellate courts, but less so at the trial court level. Why is that?

PUTTING IT ALL TOGETHER

- Figure out the facts so that you can distill the legal issues / claims that can be established with the facts available
- Frame the legal issue for your action (or defence)
 - Note *stare decisis* principles
- Proving or disprove material facts through evidence
 - Plaintiff needs to meet the burden of proof for her claim
 - The other party needs to disprove material facts not in that party's favour
- Interpret the law
 - How to address legal ambiguity
 - Extract *ratio, obiter/dicta*
 - Distinguish unfavourable cases
- Apply law to facts
 - Deductive reasoning
 - Extend by inductive reasoning
- Further justifications for (argued) decision

LEGAL RESEARCH



RESEARCHING LAW

- Statutes
 - Singapore statutes are identified by name (short title), Chapter number, and revised edition year. E.g., Copyright Act (Cap 63, 2021 ed)
 - Statutes freely accessible at <http://statutes.agc.gov.sg>. This is not the case in many countries.
- Case law
 - Singapore cases are identified by names of parties and citation (year, law report/neutral citation, page/paragraph) (E.g., *Chwee Kin Keong v. Digilandmall.com Pte Ltd*, [2005] 1 SLR(R) 502; [2005] SGCA 2
 - Some Singapore cases accessible at <http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law>
 - LawNet (subscription only) online research tool for judges, lawyers, law students and researchers
 - NUS Library access: <http://libproxy1.nus.edu.sg/login?url=http://www.lawnet.sg/lawnet/ip-access>

CASE ANALYSIS



LANGRIDGE V. LEVY

CASE ANALYSIS SEMINAR (LANGRIDGE V. LEVY)

- Plaintiff proposed: [7] *Wherever a duty is imposed on a person by contract or otherwise, and that duty is violated, any one who is injured by the violation of it may have a remedy against the wrongdoer.*
- Court:
 - [5] *this action cannot be supported upon the warranty as a contract, for there is no privity in that respect between the plaintiff and the defendant*
 - [7] *We are not prepared to rest the case upon one of the grounds on which the learned counsel for the plaintiff sought ... [ergo, no thanks to the concept of negligence]*
 - [8] *There is a false representation made by the defendant, with a view that the plaintiff should use the instrument in a dangerous way, and, unless the representation had been made, the dangerous act would never have been done.*
 - [10] *there is fraud, and damage, the result of that fraud, not from an act remote and consequential, but one contemplated by the defendant at the time as one of its results, the party guilty of fraud is responsible to the party injured.*

CASE ANALYSIS SEMINAR (LONGMEAD V. HOLLIDAY)

CASE ANALYSIS SEMINAR (LONGMEAD V. HOLLIDAY)

- Plaintiff proposed: [8] : There ought to be an implied warranty that dangerous articles sold should be fit for use and a merchant should exercise reasonable care to ensure that the articles are fit for use.
- Court:
 - [4] Citing *Langridge v. Levy* to support the proposition that '[t]here is no doubt, that if the defendant had been guilty of a fraudulent representation that the lamp was fit and proper to be used, knowing that it was not, and intending it to be used by the plaintiff's wife or any particular individual, the wife (joining her husband for conformity) or that individual would have had an action for the deceit.'
 - [4] Found no fraud: "fraud being negatived in this case, the action cannot be maintained."
 - [5] Gives examples of other cases where 'besides those of fraud, in which a third person, though not a party to the contract, may sue for the damage sustained if it be broken.' Cases all involved the direct treatment of the non-contracting person by the defendant, even though the contract for services / purchase of goods, would have been signed by someone else.
 - [7] Announces that "it may be the same when anyone delivers to another without notice an instrument in its nature dangerous, or under particular circumstances, as a loaded gun which he himself loaded, and that other person to whom it is delivered is injured ... But it would be going much too far to say, that so much care is required in the ordinary intercourse of life between one individual and another, that, if a machine not in its nature dangerous, – a carriage for instance, – but which might become so by a latent defect entirely unknown, although discoverable by the exercise of ordinary care, should be lent or given by one person, even by the person who manufactured it, to another, the former should be answerable to the latter for a subsequent damage accruing by the use of it."
 - [9] There was no contract with the wife. And there was no other misfeasance, since there was no indication that the defendant committed fraud due to the absence of intent. There was no duty on the defendant to conduct safety checks on the products either. Hence, defendant prevailed.



CASE ANALYSIS SEMINAR (GEORGE V. SKIVINGTON)

CASE ANALYSIS SEMINAR (GEORGE V. SKIVINGTON)

- Plaintiff proposed: [1] Defendant manufacturer should have a duty not to act unskillfully or negligently in making products and not to cause injury to the users of the defendant's product.
- Court:
 - [2] Warranty is irrelevant. The key question is, "whether the defendant, a chemist ... knowing of the purpose, for which it was bought, is liable in an action on the case for unskillfulness and negligence in the manufacture of it whereby the person who used it was injured. [3] And I think that, quite apart from any question of warranty, express or implied, there was a duty on the defendant, the vendor, to use ordinary care in compounding this wash for the hair. Unquestionably there was such a duty towards the purchaser, and it extends, in my judgment to the person for whose use the vendor knew the compound was purchased."
 - [7] Pigott B. limited the general principle to the situations where there was no reason for the defendant to know the purpose of the intended use (i.e., defendant should be held liable only if she knew the intended use and user).
 - [9] Cleasby B. proclaimed case was exact like *Langridge v. Levy*, all one had to do was substitute fraud for negligence. In essence, he pronounced that the *Langridge* case held that a trader has a duty of to provide safe goods to the buyers even if the goods weren't inherently dangerous (like the gun in *Langridge*).
 - [10] Cleasby B. argued the key question is whether the allegations are sufficient to raise a duty of due and ordinary care towards the female plaintiff. Since the defendant was the only one who knew about the ingredients, advertised it to meet a particular quality, and the product failed to meet the quality standards, and knew the purpose for which the product was purchased, the defendant was under an obligation to exercise due and ordinary care towards the female plaintiff, and there was negligence from which injury arose.

CASE ANALYSIS SEMINAR (HEAVEN V. PENDER)

CASE ANALYSIS SEMINAR (HEAVEN V. PENDER)

- Plaintiff proposed: Defendant owed the plaintiff a duty of care to supply a safe platform.
- Court:
 - [3]  duty of care can arise not only under a contract but also based on the circumstance. Gave examples.
 - [6] Appeals to **common sense** to justify the reason for the existence of duty of care beyond contractual right.
 - [9] *The proposition which these recognized cases suggest, and which is, therefore, to be deduced from the, is that whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.*
 - Contrast with [13] which outlines the cases where the rule should not apply.
 - Contrast the dissenting opinion by Cotton L.J.  who would prefer to limit the duty of care to dangerous instruments.

WEEK 5 AGENDA

- No lecture
- Moot court week based on a hypothetical given to you.
- Homework is due
- Please check LumiNUS for the group you have been assigned to join to prepare for moot court