



Singapore  
Institute of Legal Education

**Part A Bar Examinations 2016**

# **Evidence Law**

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## SINGAPORE INSTITUTE OF LEGAL EDUCATION

### Part A Bar Examinations 2016

#### Evidence Law

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### COURSE CONTENT AND APPROACH

The Course consists of 11 topics. The content of the Course is provided in the lecture recordings, the PowerPoint slides and the lecture outlines. The primary rules of evidence will be examined in the recordings. In line with the policy of the Part A Course, the approach will be more practical than theoretical. However, as Evidence Law is inherently complex and afflicted by difficulties which arise from the uneasy relationship between a 122 year old statute ('the Evidence Act') and the evolving common law, it will be necessary to consider many of the principles in some depth. This is the reason why the recordings are quite long for most of the topics. The framework of the Course is further considered in the introductory lecture (Topic 1) and related materials.

### EXAMINATION

The examination will consist of a combination of hypothetical and essay-type questions. Candidates will be required to answer **two** questions. The questions will test the candidate's understanding of the law and his or her ability to apply the principles to a range of issues covered in the Course.

### READING LISTS

#### Local Books

- Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed).
- Chen Siyuan & Lionel Leo, *The Law of Evidence in Singapore* (Sweet & Maxwell, 2016).
- *Halsbury's Laws of Singapore, Evidence*, vols 10 and 10(2) (LexisNexis, 2013 reissue).
- Chin Tet Yung, *Evidence* (Butterworths, 1988) (no longer in print but may possibly be found in libraries).

#### Indian reference works (optional reading)

- M C Sarkar (ed), *Sarkar's Law of Evidence* (Nagpur: Wadhwa and Co, 2007) or any later edition.
- Ratanlal Ranchhoddas (ed), *Ratanlal & Dhirajlal's The Law of Evidence* (Nagpur, India: Wadhwa and Co., 2010) or any later edition.

**English texts** (the following are just some of the leading texts). Use with care because of differences between Singapore and English law.

- I H Dennis, *The Law of Evidence* (Sweet and Maxwell, 5th ed, 2013).
- Colin Tapper, *Cross & Tapper on Evidence* (OUP, 12th ed, 2010).
- Adrian Keane & Paul McKeown, *The Modern Law of Evidence* (OUP, 10th ed, 2014).
- Peter Murphy & Richard Glover, *Murphy on Evidence* (OUP, 13th ed, 2013).
- Hodge M Malek, *Phipson on Evidence* (Sweet & Maxwell, 18th ed, 2013) (a practitioner's work).

### **Background to the Evidence Act**

- James Fitzjames Stephen, *The Indian Evidence Act (1 of 1872): with an introduction on the principles of judicial evidence* (Calcutta: Thacker, Spink & Co., 1872) (no longer in print but may be found in libraries).
- James Fitzjames Stephen, *A Digest of the Law of Evidence* (London: William Clowes and Sons, 5th edn, 1886) (no longer in print but may be found in libraries).

## TOPIC 1: STATUTORY FRAMEWORK AND CONCEPTS

This lecture will involve a consideration of the nature of law of evidence, the scheme of the Evidence Act, the doctrine of relevancy and concepts. This outline (and other lecture outlines) should be read together with the slides presented.

### I. Sources of Law:

- Evidence Act (Cap 97).
- Criminal Procedure Code (Cap 68, 2012 Rev. Ed).
- The common law to the extent permitted.
- Provisions in other statutes.

### II. Background to the Evidence Act

- Enacted in 1893. Largely based on Indian Evidence Act 1872
- For an historical account, see *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and Other Appeals* [2007] 2 SLR(R) 367, at [28]-[29].
- Extracts of James Fitzjames Stephen's *Digest of the Law of Evidence and Introduction to the Indian Evidence Act 1872* (no longer in print but may be found in libraries).

### III. The Evidence Act as a code.

- *Bank of England v Vagliano* (1891) AC 107, 144-145.
- *Mahomed Syedol Ariffin v Yeoh Ooi Gark* (1916) 2 AC 575, at 581.
- Section 2(2) of the Evidence Act.
- *PP v Knight Glenn Jeyasingam* [1999] 2 SLR 499, at paras 55-61.
- *Lee Kwang Peng v PP* [1997] 2 SLR(R) 569.
- *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239, at [116]-[123].
- *Shaaban v Chong Fook Kam* [1969] 2 MLJ 210.
- *Approaches to the Evidence Act: the judicial development of a code* [2002] 14 Singapore Academy of Law Journal, Pt 2, pp 365-386.

### IV. System of the Evidence Act.

1. Relevancy/admissibility (note the inclusionary nature of the rules). I.e., what can be proved? S 5 of the Act states that evidence may be given of 'facts in issue' and facts declared to be relevant by ss 6-57.
2. Modes of proof. I.e., how to prove facts? Oral, documentary, real evidence. See ss 61 and 62. Note that facts which have been judicially noticed (ss 58-59) or

admitted (s 60) do not have to be proved. Documentary evidence is governed by ss 63-102 of the Act.

3. Production and effect of evidence. I.e., who has to prove what and to what degree? See ss 103-116 read with s 3(3)-(5) and s 4(1)-(3).
4. The rules which govern the adduction of evidence: who is capable of giving evidence? Can he be compelled to testify? Must he answer all questions? How may a witness be examined? (ss 120-167).

The following materials by Stephen are useful to gain a fuller understanding of the scheme of the Act (of which he was the draftsman): '*Introduction to the Evidence Act, 1872*' (in particular, read the chapter entitled: 'General distribution of the subject') and the '*Stephen's Digest*' (the introductory chapter). These items are included in the materials you have been given. The complete texts may be found in the reserved books section of the library (see the reading list).

#### V. Relevancy and admissibility

- Facts in issue and relevant facts: the distinction.
- S 5 states that facts in issue and relevant facts may be proved.
- S 3 defines facts in issue.
- Ss 6 - 57 state all the categories of facts which are regarded as relevant facts. Note s 5 which states that only those facts declared by the Act to be relevant may be adduced in evidence.
- S 3(2) does not define the term "relevance" but merely states that a fact will be relevant if it is so declared by the Act.
- Meaning of 'relevance'. One of Stephen's definitions:
  - "Facts from the existence of which inferences as to the existence of the facts in issue may be drawn." (*Introduction to the Evidence Act, 1872*, para 15; *Digest of the Law of Evidence*, p xii.)
  - *The meaning of relevancy in English Law*: Distinctions are made between relevancy and admissibility and between legal and logical relevancy.
  - Also note quotes in *R v A (No 2)* [2002] 1 AC 45 and *DPP v Kilbourne* [1973] AC 729 (referred to in the slides).
- Sections 6-9 and 11 of the EA
- "Direct" and "circumstantial" evidence.
  - *Sunny Ang v PP* (1966) 2 MLJ 195.
  - *PP v Chee Cheong Hin* [2006] 2 SLR(R) 24.
- Scheme of admissibility in EA is inclusionary: *Lee Chez Kee v PP* [2008] 3 SLR(R) 447. Cf *Soon Peck Wah v Woon Chye Chye* [1997] 3 SLR(R) 430.
- Parties have a right to adduce admissible evidence: *Basil Anthony Herman v Premier Security Co-operative Ltd* [2010] 3 SLR 110.
- Court to decide on relevance/admissibility: S 138 of Evidence Act.

- Distinguish between admissibility (determined by law) and weight (determined by assessment of the evidence).

#### VI. Modes of proof: Oral, documentary and real evidence.

**Oral evidence:** s 62(1): Allows witnesses to give direct evidence of facts in issue and relevant facts. The relevant fact must be personally perceived. This sometimes referred to as the direct evidence rule. Note that in civil cases, witnesses generally give their evidence in chief by affidavit. Once they have confirmed their affidavits at trial, they may be cross-examined. In criminal cases, evidence is presented by the traditional method of examination in chief.

**Documentary evidence:** ss 63-102. These are provisions governing the proof of documents.

**Real evidence:** s 62(3). The distinction between documentary and real evidence can be difficult to make at times. This is important because an item which is classified as real evidence may be admitted as original evidence, while a document which is adduced as evidence of its assertions may be excluded as being hearsay. (This will be considered in the course of the hearsay lectures.)

#### VII. Effect of Illustrations in Evidence Act.

- *Mahomed Syedol bin Arifin v Yeoh Ooi Gark* (1916) 2 AC 575 at 581.
- *PP v Muhammad Rahmatullah Maniam bin Abdullah* [1999] SGHC 252, at [35].

#### VIII. Role of Judge as Trier of Fact

If the Judge excludes evidence, he proceeds to hear the other evidence and must keep the excluded evidence out of his mind. The Judges generally indicate that this is not an issue of concern.

Consider the observations in:

- *Wong Kim Poh v PP* [1992] 1 SLR(R) 13, at [14].
- *Tan Meng Jee v PP* [1996] 2 SLR(R) 178, at [48].
- *Tan Chee Kieng v PP* [1994] 2 SLR(R) 577 at [8].
- *AG of Hong Kong v Siu Yuk-Shing* [1989] 1 WLR 236, at 241.

## TOPIC 2(A): CHARACTER EVIDENCE: SIMILAR FACTS

### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed) Ch 3.
- Ho Hock Lai, An Introduction to Similar Fact Evidence (1998) 19 Sing L Rev 166.
- Ho Hock Lai, 'Similar Facts in Civil Cases' (2006) 26 OJLS 131.

### Statutory provisions:

- ss 14, 15 and 11 of the Evidence Act.

### I. Criminal cases

- *Makin v A G for New South Wales* [1894] AC 57.
- *PP v Teo Ai Nee* [1995] 1 SLR(R) 450.
- *R v Boardman* [1975] AC 421.
- *DPP v P* [1991] 2 AC 447.
- *Tan Meng Jee v PP* [1996] 2 SLR 422; [1996] 2 SLR(R) 178.
- *PP v Mas Swan bin Adnan and another* [2011] SGHC 107.
- *PP V Dinesh Pillai a/l K Rajah Retnam* [2011] SGHC 95.
- *Lee Kwang Peng v PP* [1997] 2 SLR(R) 569.
- *R v H* [1995] 2 AC 596.
- *R v M* [2000] 1 All ER 148.
- *Ng Beng Siang & Ors v PP* [2003] SGCA 17.
- *PP v Lai Tuck Meng and anor* [2016] SGDC 135, at [228]-[231].

### II. Civil Cases

- *Hin Hup Bus Service v Tay Chwee Hiang* [2006] 4 SLR(R) 723.
- *Mood Music Publishing Co Ltd v De Wolfe* [1976] Ch 119.
- *Rockline Ltd v Anil Thadani* [2009] SGHC 209.
- *O'Brien v Chief Constable of South Wales Police* [2005] 2 AC 534.

**TOPIC 2(B): CHARACTER EVIDENCE: OTHER ASPECTS OF CHARACTER**

**Reading:**

- Evidence and the Litigation Process (LexisNexis, 2015, 5th ed) Ch 9; Ch 20, at [20.060]-[20.093].
- I. Evidence of the Accused's good character:**
- ss 55 and 56 of EA.
  - *Tsang Kai Mong Elke v PP* [1994] 1 SLR 651; [1994] 1 SLR 651.
  - *Chan Mei Yoong Letticia* [2002] 1 SLR(R) 897.
- II. Cross-examination of the accused:**
- ss 56, 122(4)-(8) of EA.
  - *PP v Purushothaman a/l Subramaniam* [2014] SGHC 15.
  - *Tan Nguan Siah v PP* [1993] 3 SLR(R) 246.
  - *PP v Tan Chuan Ten & Anor* [1996] SGHC 281.
  - *Garmaz s/o Pakhar v PP* [1995] 3 SLR(R) 453.
- III. Character of Parties in Civil Cases:**
- s 54 of the EA.
  - *Chan Emily Kang Hock Chai Joachim* [2005] 2 SLR(R) 236.
  - *Rockline Ltd v Anil Thadani* [2009] SGHC 209.
- IV. Credit and Credibility:**
- ss 148(c), 150, 155, 157(a).
  - *Kwang Boon Keong Peter v PP* [1998] 2 SLR(R) 211.



### TOPIC 3: HEARSAY EVIDENCE

#### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Chs 4 and 6;
- Chin TY, *Hearsay Reforms, Simplicity in Statute, Pragmatism in Practice* (2014) 26 SAclJ 398-435.

#### I. Nature and Scope of the Hearsay Rule

- *Lee Chez Kee v PP* [2008] 3 SLR(R) 447, at [67].
- *Roy S Selvarajah v PP* [1998] 3 SLR(R) 119, at [40].
- *Soon Peck Wah v Woon Chye Chye* [1997] 3 SLR(R) 430.
- *R v Lydon* (1987) 854 Cr App R 221.
- *PP v Subramaniam* [1956] 1 MLJ 220.
- *Keimfarben GmbH & Co KG v Soo Nam Yuen* [2004] SLR(R) 534.
- *Choo Pit Hong Peter v PP* [1995] 1 SLR(R) 834.
- *Saga Foodstuffs Manufacturing (Pte) Ltd v Best Food Pte Ltd* [1995] 1 SLR 739.
- *Chandrasekera v R* [1937] AC 220.
- *R v Gibson* (1887) 18 QBD 537.
- *Teper v R* [1952] AC 480.
- *Walton v R* (1989) 166 CLR 283 (84 ALR 59).
- *R v Ratten* [1972] AC 378.
- *R v Kearley* [1992] 2 AC 228.
- *Wright v doe d Tatham* (1837) 7 Ad & E 313; 112 ER 488.
- *R v Patel* [1981] 3 All ER 94.
- *R v Shone* (1983) 76 Cr App Rep 72.
- *Sagarmull v Manraj*[1900] 4 CWN ccvii.
- *R v Rice* [1963] 1 QB 857.
- *R v Lydon* (1987) 854 Cr App R 221 (already discussed).
- *R v Cook* [1987] QB 417.
- *R v Percy Smith* 1976] Crim LR 511.

#### II. System of Admissibility under the EA

- *Yeo Hock Cheng v R* [1938] MLJ 104 (s 32(1)(a) of the EA).
- *Chandrasekera v R* [1937] AC 220 (s 32(1)(a) of the EA).
- *Toh Lai Heng v PP* [1961] MLJ 53 (s 32(1)(a) of the EA).
- *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] SGCA 8 (s 32(1)(b) of the EA).
- *Press Automation Technology Pte Ltd v Translink Exhibition Forwarding Pte Ltd* [2003] 1 SLR(R) 712 (s 32(1)(b) of the EA).
- *Vaynar Suppiah & Sons v Abdul Rahim K M A and Another* [1974–1976] SLR(R) 112 (s 32(1)(b) of the EA).

- *Teo Wai Cheong v Crédit Industriel et Commercial and another appeal* [2013] 3 SLR 573 (a case on s 33 of the EA but which is relevant to s 32(1)(j) in respect of the conditions of unavailability in s 32(1)(j)).
- *Pacific Marine & Shipbuilding Pte Ltd v Xin Ming Hua Pte Ltd* [2014] SGHC 102 (s 32(1)(j) of the EA).
- *Goi Wang Fern (Ni Wanfen) and Ors v Chee Kow Ngee Sing (Pte) Ltd* [2014] SGHC 261 (s 32(1)(j) of the EA).
- *Wan Lai Ting v Kee Kah Kim* [2014] SGHC 180 (s 32(1)(j) of the EA).
- *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] SGCA 8 (s 32(3) of the EA).
- *Wan Lai Ting v Kee Kah Kim* [2014] SGHC 180 (s 32(3) of the EA).

### III. 'Res Gestae'

- *Mohd b. Allapitchay v PP* [1958] MLJ 197.
- *R v Bedingfield* (1879) 14 Cox CC 341.
- *Hamsa Kunju v R* [1963] MLJ 228.
- *Ratten v R* [1972] AC 378.
- *R v Andrews* [1987] AC 281.
- *Chi Tin Hui v PP* [1994] 1 SLR(R) 313.

#### TOPIC 4: STATEMENTS FROM ACCUSED PERSON; CONFESSIONS & ADMISSIONS

##### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Ch 5;
- Chin Tet Yung, "CPC 2010: Confessions and Statements by Accused Persons Revisited" [2012] 24 SAclJ 60.

##### Statutory Provisions

- EA, ss 17(1),(2); s 21; former s 24 (repealed; now see s 258(3) CPC)
- CPC, ss 21-23, 258 (formerly CPC, ss 120-122)

##### I. Principles of admissibility [the cases are set out in alphabetical order]

- *Azman bin Mohamed Sanwan v PP* [2012] 2 SLR 733.
- *PP v Dahalan bin Ladaewa* [1995] 2 SLR(R) 124.
- *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619.
- *Fung Yuk Shing v PP* [1993] 2 SLR(R) 771.
- *Garnam Singh v PP* [1994] 1 SLR(R) 1044 .
- *Gulam bin Notan v PP* [1999] 1 SLR(R) 498.
- *Ismail bin Abdul Rahman v PP* [2004] 2 SLR(R) 74.
- *PP v Lim Boon Hiong* [2010] 4 SLR 696.
- *PP v Lim Kian Tat* [1990] 1 SLR(R) 273.
- *PP v Ismil bin Kadar* [2009]SGHC 84.
- *Lim Thian Lai v PP* [2006] 1 SLR(R) 319.
- *Lu Lai Heng v PP* [1994] 1 SLR(R) 1037.
- *Osman bin Din v PP* [1995] 1 SLR(R) 419.
- *Panya Martmontree v PP* [1995] 2 SLR(R) 806.
- *Poh Kay Keong v PP* [1995] 3 SLR(R) 887.
- *Seow Choon Meng v PP* [1994] 2 SLR(R) 338.
- *PP v Tan Boon Tat* [1990] 1 SLR(R) 287 [upheld in [1992] 1 SLR(R) 698].
- *Tey Tsun Hang v PP* [2015] 2 SLR(R) 1189.
- *Yeo See How v PP* [1996] 2 SLR(R) 277.

##### II. Weight of confession [see the first lecture slides on weight]

- *Lim Boon Keong v PP* [2010] 4 SLR 451.

##### III. Retracted confession

- *Lim Thian Lai v PP* [2006] 1 SLR(R) 319.
- *Muhammad bin Kadar v PP* [2011] 3 SLR 1205.
- *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45.

##### IV. Mixed statements [statement which combines exculpatory and inculpatory elements]

- *Chan Kin Choi v PP* [1991] 1 SLR(R) 111.
- *Tang Tuck Wah v PP* [1991] 1 SLR(R) 576.

**V. Doctrine of confirmation by subsequent facts**

- s 258(6)(c) CPC [formerly, s 27 EA].
- *PP v Chin Moi Moi* [1994] 3 SLR(R) 924.

**VI. Evidence against Co-Accused:**

- s 258(5) CPC [formerly s 30 EA].

1. Definition of 'confession'

- *Anandagoda v R* [1962] MLJ 289.
- *Sim Cheng Hui v PP* [1998] 1 SLR(R) 670.
- *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619.
- *Tong Chee Kong v PP* [1998] 1 SLR(R) 591.

2. Effect of confession

- *Ramachandran v PP* [1993] 3 SLR(R) 392.
- *PP v Chin Seow Noi* [1993] 3 SLR(R) 566.
- *Lee Chez Kee v PP* [2008] 3 SLR(R) 447.

## TOPIC 5: RIGHT OF SILENCE AND PRIVILEGE AGAINST SELF-INCRIMINATION

### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Ch 5, para [5.056]-[5.065]; Ch 23, para [23.014]-[23.023];
- Ho Hock Lai, "The Privilege against Self-Incrimination and the Right of Access to a Lawyer - A Comparative Assessment" (2013) 25 SAcLJ 826.

### I. Silence when the suspect is questioned/confronted by person other than law enforcement officers

- CPC, s 261(2) (formerly, s 123(3)).
- *Parkes v R* [1976] 1 WLR 1251 (which was followed in *Tan Khee Koon v PP* [1995] 3 SLR(R) 404).

### II. Silence when the suspect is questioned by law enforcement officers

- CPC, s 22(2) (formerly, s 121(2)).
- Privilege against self-incrimination is generally the right not say anything that might expose [one] to a criminal charge, penalty or forfeiture.
- *PP v Mazlan bin Maidun* [1992] 3 SLR(R) 968.
- *Ong Seng Hwee v PP* [1999] 3 SLR(R) 1; [1999] 4 SLR 181 at 190-191.
- *Lim Lye Huat Benny v PP* [1995] 3 SLR(R) 689; [1996] 1 SLR 253, esp at 262.
- *Kwek Seow Hock v PP* [2011] 3 SLR 157.
- *PP v Illechukwu Uchechukwu Chukwudi* [2015] SGCA 33.
- *Taw Cheng Kong v PP* [1998] 1 SLR(R) 78 and *Seah Hock Thiam v PP* [2013] SGHC 136 (concerning presumptions in the Prevention of Corruption Act).

### III. Silence when the suspect is charged or officially informed that he is to be prosecuted for an offence

- CPC, ss 23, 261 (formerly, s 122(6) and s 123).
- *PP v Tsang Yuk Chung* [1990] 2 SLR(R) 39.
- *PP v Azman bin Abdullah* [1998] 2 SLR(R) 351.
- *Lau Lee Peng v PP* [2000] 1 SLR(R) 448; [2000] 2 SLR 628, especially [36]-[40].
- *Yap Giau Beng Terence v PP* [1998] 2 SLR(R) 855; [1998] 3 SLR 656, especially [38].
- *Kwek Seow Hock v PP* [2011] 3 SLR 157.

### IV. Silence of the defendant at trial when he is called to present his defence

- CPC, s 230(m) and s 291(3) (formerly s 189 and s 196).

- *Haw Tua Tau v PP* [1981] 2 MLJ 49.
- *Took Leng How v PP* [2006] 2 SLR(R) 70, especially [40]-[45].
- *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619 at [80]-[83].
- *Oh Laye Koh v PP* [1994] SGCA 102.
- *PP v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24.
- *Loo Koon Seng v PP* [1995] 1 SLR(R) 271.
- *Ramakrishnan s/o Ramayan v PP* [1998] 3 SLR(R) 161.

## TOPIC 6: OPINION EVIDENCE

### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Ch 9;
- Pinsler J, "Expert Evidence and Adversarial Compromise: A reconsideration of the Expert's Role and Proposals for Reform" [2015] 27 Singapore Academy Law Journal 55.

### I. LAY OPINION

- *Leong Wing Kong v PP* [1994] 1 SLR(R) 681.
- *R v Davies* [1962] 1 WLR 1111.
- *Sherrard v Jacob* [1965] NI 151.
- *Graat v R* [1982] 144 DLR (3d) 267.
- *Tan Joon Wei Wesley v Lee Kim Wei* [2013] SGHCR 24.

### II. EXPERT OPINION

1. General principles
  - *Pacific Recreation Pte Ltd v SY Technology Inc* [2008] 2 SLR(R) 491.
  - *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2009] 2 SLR(R) 166.
  - *Chandrasekaran & Ors v PP* [1971] 1 MLJ 153.
  - *Sim Ah Oh v PP* [1962] MLJ 42.
  - *Leong Wing Kong v PP* [1994] 1 SLR(R) 681.
2. Qualifications of expert
  - *PP v Muhamed bin Sulaiman* [1982] 2 MLJ 320.
  - *PP v Chong Wei Kian* [1990] 3 MLJ 165.
3. Justification for expert
  - *Ong Chan Tow v R* [1963] MLJ 160.
  - *PP v Tubbs Julia Elizabeth* [2001] 2 SLR(R) 716.
  - *Khoo Bee Kiong v Ang Chun Hong* [2005] SGHC 128.
  - *R v Turner* [1975] QB 834.
  - *Chou Kooi Pang v PP* [1998] 3 SLR(R) 205.
  - *Lowery v R* [1974] AC 75.
4. Ultimate issue
  - *DPP v ABC Chewing Gum* [1968] 1 QB 159.
  - *R v Stockwell* (1993) 97 Cr App Rep 260.
5. Evaluation of expert testimony
  - *Saeng-Un Udom v PP* [2001] 2 SLR(R) 1.
  - *Sakthivel Punithavathi v PP* [2007] 2 SLR(R) 983.

6. Conflicting expert testimony
  - *Singapore Finance Ltd v Lim Kah Ngam (S'pore) Pte Ltd* [1984] SGHC 11. [1983-1984] SLR(R) 403.
  - *Tengku Jonaris Badlishah v PP* [1999] 1 SLR(R) 800.
  - *McLean v Weir* [1973] 3 CCLT 87.
  - *Muhammad Jefry bin Safii v PP* [1996] 2 SLR(R) 738.
  
7. Grounds of opinion
  - Sections 53, 62(1)(d), 62(2) of the Evidence Act.
  - *AD v AE* [2005] 2 SLR(R) 180.
  - *Khoo Bee Kiong v Ang Chun Hong* [2005] SGHC 128.
  - *Singapore Tourism Board v Children's Media Ltd* [2008] 3 SLR(R) 981.
  - *Gema Metal Ceilings (Far East) v Iwatani Techno Construction (M)* [2000] SGHC 37.
  
8. Ethical perspectives
  - *Vita Health Laboratories Pte Ltd v Pang Seng Meng* .[2004] 4 SLR 162.
  - *Khoo Bee Kiong v Ang Chun Hong* [2005] SGHC 128.
  - *Mühlbauer AG v Manufacturing Integration Technology Ltd* [2010] 2 SLR 724.
  
9. Novel science
  - *Frye v US* 293 F 1013 (1923).
  - *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579 (1993).



## TOPIC 7: COURT'S DISCRETION TO EXCLUDE EVIDENCE

### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Ch 10.
- HL Ho, "'National Values on Law and Order" and the Discretion to Exclude Wrongfully Obtained Evidence' [2012] *Journal of Commonwealth Criminal Law* 232 (to be uploaded).
- J. Pinsler, 'Whether a Singapore Court has a Discretion to Exclude Evidence Admissible in Criminal Proceedings' (2010) 22 *SACJL* 335 (on Lawnet).
- J. Pinsler, 'Admissibility and the Discretion to Excluded Evidence: In Search of a Systematic Approach' (2013) 25 *SACJL* 215.

### I. QUESTIONS AND POINTS TO CONSIDER

1. Is there a general principle governing the discretion to exclude evidence in the EA?
2. Consider s 5 of the EA
3. Are the admissibility provisions of the EA and CPC sufficient to ensure that admitted evidence will always be in the interest of justice?
4. If there is no statutory basis for a general discretion to exclude evidence, can the principle be incorporated from common law?
5. What is the effect of s 2(2) of the EA on the question raised in (4)?
6. Specific discretions in s 32(3) and s 47(4) of the EA concerning hearsay and expert opinion evidence. See cases on s 32(3) in hearsay slides.
7. Minister's comment in Parliament that s 32(3) and s 47(4) of the EA are in addition to the court's inherent jurisdiction to exclude evidence.

### II. PRIMARY CASES

- *Cheng Swee Tiang v PP* [1964] MLJ 291.
- *Kuruma Kaniu v The Queen* [1955] AC 197.
- *R v Sang* [1980] AC 402.
- *Ajmer Singh v PP* [1985-1986] SLR(R) 1030
- *How Poh Sun v PP* [1991] 2 SLR(R) 270.
- *Chan Chi Pun v PP* [1994] 1 SLR(R) 654.
- *SM Summit Holdings Ltd v PP* [1997] 3 SLR(R) 138.
- *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 (CA); [2006] 4 SLR(R) 934 (HC).
- *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239.
- *Lee Chez Kee v PP* [2008] 3 SLR(R) 447 at [106].
- *PP v Dahalan bin Ladaewa* [1995] 2 SLR(R) 124.
- *Muhammad bin Kadar v PP* [2011] 3 SLR 1205.
- *ANB v ANC* [2014] SGHC 172.
- *ANB v ANC* [2015] 5 SLR 522.

## TOPIC 8: COMPETENCE, COMPELLABILITY, LEGAL ADVICE AND LITIGATION PRIVILEGE

### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed) paragraphs 11-08-11-010; Ch 14;
- Chin Tet Yung, *Extending the Scope of Legal Advice Privilege* (2007) 19 SAclJ 133;
- Ho Hock Lai, *Legal Advice Privilege and the Corporate Client* [2006] SJLS 231;
- Ho Hock Lai, *Legal Professional Privilege and the Integrity of Legal Representation* (2006) 9 Legal Ethics 163;
- Pinsler J, *The Three Rivers District Council Saga: New issues of professional privilege for a Singapore court to decide* (2005) 17 SAclJ 596;
- Pinsler J, *New Twists in Legal Professional Privilege: Communications for the Purpose of Litigation and Between the Lawyer and Client* [2002] 14 SAclJ 248.

### I. COMPETENCE AND COMPELLABILITY

#### Statutory provisions:

- ss 120 to 122(1)-(3) of the Evidence Act.
- Consequences if accused does not testify: s 291(3) of the Criminal Procedure Code.

#### Case law:

- *R v Hill* [1851] 2 Den CC 254.
- *Chai Kor Pee v PP* [1965] 2 MLJ 208.
- *Lim Lye Hock v PP* [1994] 3 SLR(R) 649, at [30].
- *Lee Teck Wah v PP* [1998] 1 SLR(R) 726, at [28].

### II. LEGAL ADVICE PRIVILEGE

1. Application of the EA:
  - EA, s 2(1).
  - *Yap Sing Lee v MCST No 1267* [2011] 2 SLR 998.
  - *HT S.R.L. v Wee Shuo Woon* [2016] SGHC 15.
2. Introduction and rationale
  - *Greenough v Gaskell* (1833) 1 My & K 98.
  - *R v Derby Magistrates' Court* [1996] 1 AC 487.
  - *Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd* [2007] 2 SLR(R) 367.
3. Elements of s 128(1) and s 128A.
  - *Balabel v Air India* [1988] 2 All ER 246.
  - *Three Rivers District Council & Ors v Governor and Company of the Bank of England (No. 6)* [2005] AC 610.
  - *Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd* [2006] 3 SLR(R) 441; [2007] 2 SLR(R) 367.

- *Smith v Daniell* 44 LJ Ch 189.
  - *Minter v Priest* [1930] AC 558.
  - *Re Sarah Getty v Getty Trust* [1985] 2 All ER 809.
  - *R v Peterborough Justices, ex parte Hicks* [1977] 1 WLR 1371.
4. Relationship between s 128(1) and 131
- - Impact of amendments: sections 128A, 130, 131, s 3(6) and (7).
  - Common law privilege applies to communications between client and foreign lawyer (*CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Polimet Pte Ltd and others* [2015] SGHC 325). Cases referred to in judgment include *International Business Machines Corp and another v Phoenix International (Computers) Ltd* [1995] 1 All ER 413; *Kennedy v Wallace* (2004) 213 ALR 108.
5. Application of ss 128 and 128A to persons supervised by legal professional advisers (including trainees!).
- Section 129: Sections 128 and 128A apply to “interpreters and other persons who work under the supervision of legal professional advisers” (eg, paralegals, trainees, secretaries).
6. Exceptions to the operation of privilege: s 128(2)(a) and (b)
- Illustrations (a), (b) and (c).
  - *Barclays Bank v Eustice* [1995] 1 WLR 1238.
  - *Francis & Francis (a firm) v Central Criminal Court* [1988] 3 All ER 775.
  - *Brown v Foster* (1857) 1 H&N 736.
  - *Gelatissimo Ventures (S) Pte Ltd & Ors v Singapore Flyer Pte Ltd* [2010] 1 SLR 833.
7. Waiver
- Sections 128, 128A, 130, 131 (as amended).
  - *Calcraft v Guest* [1890] 1 QB 759.
  - *Goddard v Nationwide Building Society* [1986] 3 WLR 734.
  - *Lord Ashburton v Pape* [1913] 2 Ch 469.
  - *Tentat Singapore Pte Ltd v Multiple Granite Pte Ltd & Ors* [2009] 1 SLR(R) 42.

### III. LITIGATION PRIVILEGE

- *Ventouris v Mountain* [1991] 1 WLR 607.
- *Waugh v British Railways Board* [180] AC 521.
- *Wee Keng Hong Mark v ABN Amro Bank NV* [1997] 1 SLR(R) 141.
- *Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd* [2006] 3 SLR(R) 441; [2007] 2 SLR(R) 367.
- *Brink's Inc & Anor v Singapore Airlines Ltd & Anor* [1998] 2 SLR(R) 372.

## TOPIC 9: BURDEN AND STANDARDS OF PROOF

### Reading:

- *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Ch 12.
- Michael Hor, "The Presumption of Innocence – A Constitutional Discourse for Singapore" [1995] SJLS 365.
- Michael Hor, "The Burden of Proof in Criminal Justice" (1992) 4 S Ac LJ 267.
- Chan Sek Keong, "The Criminal Process - The Singapore Model" (1996) 17 Sing L Rev 431 (p p 433-451; 491-503).

### I. PRELIMINARY CONSIDERATIONS

- *Re B* [2009] 1 AC 11.
- *Eu Lim Hoklai v PP* [2011] 3 SLR 167.

### II. BURDEN OF PROOF

#### Statutory provisions:

- Sections 103-116 of the Evidence Act.
1. Presumption of Innocence
    - Section 103 and 105 of the Evidence Act.
    - *Woolmington v DPP* [1935] AC 462.
    - *Ong Ah Chuan v PP* [1980] SGPC 6; [1979-1980] SLR(R) 710.
  2. General Exceptions, Special Exceptions and Provisos in the Penal Code
    - Section 107, Evidence Act.
    - *Jayasena v R* [1970] AC 618 (PC).
    - *Juma'at bin Samad v PP* [1993] 2 SLR(R) 327.
    - *Tan Chor Jin v PP* [2008] 4 SLR(R) 306.
    - cf *Vasquez v R* [1994] 1 WLR 1304, PC.
  3. Special Exceptions or Provisos in Any Law Defining the Offence
    - Section 107 of the Evidence Act.
    - *R v Edwards* [1975] 1 QB 27 (applied in *Tan Ah Tee v PP* [1980] 1 MLJ 49).
    - *R v Hunt* [1987] AC 352.
    - *PP v Kum Chee Cheong* [1993] 3 SLR(R) 737.
    - *Tan Khee Wan Iris v PP* [1995] 1 SLR(R) 723.
  4. Where the accused has special knowledge
    - Section 108 of the Evidence Act.
    - *Mary Ng v R* [1958] AC 173.
    - *Tan Khee Wan Iris v PP* [1995] 1 SLR(R) 723.
    - *PP v Kum Chee Cheong* [1993] 3 SLR(R) 737.

- *PP v Abdul Naser bin Amer Hamsah* [1996] 3 SLR(R) 268.
- *PP v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24, at [95].
- *Surender Singh s/o Jagdish Singh v Li Man Kay and Others* [2010] 1 SLR 428 at [215] onwards.

5. Alibi

- Section 105, Illustration (b), Evidence Act.
- *Syed Abdul Aziz v PP* [1993] 3 SLR(R) 1, [35].
- *Ramakrishnan s/o Ramayan v PP* [1998] 3 SLR(R) 161, at [33]-[34].
- See s 278 of the CPC concerning the procedure for the alibi defence.

### III. PRESUMPTIONS

- Terminology, concepts, types: sections 4, 109-114, 116, Evidence Act.
- *Ong Ah Chuan v PP* [1980] SGPC 6; [1979-1980] SLR(R) 710.
- *PP v Yuvaraj* [1969] 2 MLJ 89, PC M'sia.
- *Lim Koon Park and another v Yap Jin Meng Bryan and another* [2013] 4 SLR 150, at [55]-[57] (general observations on presumptions).
- *PP v Tan Kiam Peng* [2007] 1 SLR(R) 522.
- *Tan Kiam Peng v PP* [2008] 1 SLR(R) 1.
- *AD v AE* [2005] 2 SLR(R) 180.
- *Sheldrake v DPP* [2005] 1 AC 264.

### IV. STANDARDS OF PROOF

1. General principles

- Sections 3(3), (4) and (5) EA.
- *Loo Chay Sit v Estate of Loo Chay Loo* [2010] 1 SLR 286.
- *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (Trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63.
- *Eu Lim Hoklai v PP* [2011] 3 SLR 167 at [45].
- *Re B* [2009] 1 AC 11.

2. Balance of probabilities: Civil Cases

- *Miller v Minister of Pensions* [1947] 2 All ER 372.
- *Clarke v SilkAir (Singapore) Pte Ltd* [2002] 3 SLR(R) 1136, paras 58-63.
- *The Popi M* [1985] 2 All ER 712.
- *Wee Yue Chew v Su Sh-Hsyu* [2008] 3 SLR(R) 212.
- *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (Trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63.
- *Tang Yoke Kheng v Lek Benedict* [2005] SGCA 27; [2005] 3 SLR(R) 263.
- *iTronic Holdings Pte Ltd v Tan Swee Leon and another suit* [2016] 3 SLR 663.

- *Secretary of State for the Home v Rehman* [2001] UKHL 47.
- *Re H (Minors)* [1996] AC 563.
- *Chua Kwee Chen, Lim Kah Nee and Lim Chah In (as Westlake Eating House) and Anor v Koh Choon Chin* [2006] SGHC 92, [2006] 3 SLR(R) 469.
- *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [157]-[161].

3. Beyond all reasonable doubt: Criminal Cases

- *Miller v Minister of Pensions* [1947] 2 All ER 372.
- *Jagatheesan s/o Krishnasamy v PP* [2006] SGHC 129; [2006] 4 SLR(R) 45.
- *Jayasekara Arachchilage Hemantha Neranjan Gamini v PP* [2011] SGHC 54.
- *XP v PP* [2008] SGHC 107; [2008] 4 SLR(R) 686.
- *AOF v Public Prosecutor* [2012] 3 SLR 34.
- *Sakthivel Punithavathi v PP* [2007] 2 SLR(R) 983.
- *PP v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24.
- *Took Leng How v PP* [2006] SGCA 3; [2006] 2 SLR(R) 70 .
- *Eu Lim Hoklai v PP* [2011] 3 SLR 167.
- *Thong Ah Fat v PP* [2011] SGCA 65.
- *Jayasena v R* [1970] AC 618.

## TOPIC 10: CORROBORATION

**Reading:** *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Ch 13.

- *AOF v Public Prosecutor* [2012] 3 SLR 34.
- *R v Baskerville* [1916] 2 KB 658.
- *XP v PP* [2008] 4 SLR(R) 686.
- *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601.
- *Goh Han Heng v PP* [2003] 4 SLR(R) 374.
- *Tan Khee Koon v PP* [1995] 3 SLR(R) 404.
- *B v PP* [2003] 1 SLR(R) 400.
- *Ng Kwee Piow v R* [1960] MLJ 278.
- *Tang Kin Seng v PP* [1996] 3 SLR(R) 444.
- *Kwan Peng Hong v PP* [2000] 2 SLR(R) 824.
- *R v Turnbull* [1977] QB 224.
- *Heng Aik Ren Thomas v PP* [1998] 3 SLR(R) 142.
- *Khoo Kwoon Hain v PP* [1995] 2 SLR(R) 591.

**TOPIC 11: EXAMINATION OF WITNESSES**

**Reading:** *Evidence and the Litigation Process* (LexisNexis, 2015, 5th ed), Chs 18-23.

[As this is essentially a procedural topic which will be covered in Part B of the Bar Course, only a cursory understanding of the examination of witnesses is necessary at this stage. Look generally at ss 139 to 167 of the Evidence Act and Parts XII to XIV of the Criminal Procedure Code. Some of these sections have been referred to under the other topics.]

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